
L I C E N S E D.

By C O M M A N D, this 23^d. of
July 1688.

J A. V E R N O N.

154152
(35) 3528.

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THE KING'S

Visitatorial Power

ASSERTED.

Will: BEING *Powder*

An Impartial Relation of the late Visitation of St.
Mary Magdalen College in Oxford.

As likewise an Historical Account of several Visitations of the
Universities and particular Colleges.

Together with some necessary Remarks upon the Kings Authority in Ecclesiastical Causes, according to the Laws and usages of this Realm.

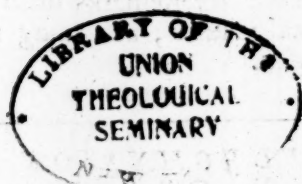
By *NATHANIEL JOHNSTON*, Doctor in Physic,
Fellow of His Majesties College of Physicians in *London.*

Pereunte Obsequio etiam Imperium Intercidit. Tacitus & Histor.


L O N D O N,

Printed by *Henry Hills*, Printer to the King's Most Excellent Majesty,
for His Household and Chappel; And are sold at his Printing-house
on the Ditch-side in *Black-Fryers.* 1688.

- 2 91
H H



TO THE Judicious Reader.

 S *oon as His Majesty had been pleased to lay His Commands upon me, to Collect materials for this Subject; I could not but reflect that it was to Treat of a matter that I knew not any had Writ upon before; and of such a largeness, that it takes in not only the Case of Magdalen College but regards all other Corporations and Societies of that Constitution, and spreads it self into some branches of the Prerogative Royal: Wherefore the nature of the Thing requires a Treatise of me, not altogether unsuitable to the Dignity of the persons concerned, viz. The King and the Universities, which would induce persons of all Ranks to peruse it, who desire satisfaction in a matter of such importance both to the Prince and Subject.*

This suggested to me a necessity of enquiring into Records of preceding ages, and to render the Work, at least, a Collection of various instances in several Cases of Visitations.

Therefore finding no compleat History of any Visitation of our Universities, except that of the long Parliament, I judged it necessary to give an Impartial account of the proceedings, from the Kings Mandate for Mr. Farmer, to the close of the Visitations by the Lords Commissioners; whereby, this and after

To the Judicious Reader.

ages might have an Authentic Precedent, if any occasion should happen of this kind, and that people concerned might know their Boundaries; and in this part I followed the Registers, Original Papers, Authentic Copies of Letters and Orders, or the Diaries & accounts of such as were present, and actors in the disquisition; and in this particular I have used as much diligence as I could, not to be imposed upon, and had finished most of this before the Oxford Relation was Printed; and wherein I differ from that, I have done it upon the best Intelligence I could obtain.

After the finishing of this I judged it not improper, before I entred upon Answering the Objections I found urged by the Vice-President and Fellows of St. Mary Magdalen College, to clear the Kings Prerogative over the Universities, in making, and Abrogating their Statutes; or dispensing with them, and placing or displacing of their Members, which obliged me to consider the matter not only in General, but also to descend to many particulars, and shew, who by the Kings Authority or sufferance have exercised the like Authority; In which I have endeavored to follow the most approved Authors, and surest Records.

I have the rather enlarged upon this head, that I might afford variety of Cases, whereby the distinct claims of Right of Visitation might be Illustrated, and this Tract might be a Repertory, whereby, upon emergences, the Original Records might be enquired after.

If some may judge me too tedious, I desire them to consider, that it was not enough to clear the point of St. Mary Magdalen College, but likewise to discover in what other Cases the
King

To the Judicious Reader.

Kings of England had exerted their Prerogatives.

The Contemplation of this led me to touch, tho' with a trembling hand, the Regalia of our Kings, and look into the Laws and usages of former times, and in what sort the Sovereignty and Supremacy of our Kings in matters of Ecclesiastical cognizance, are declared by the Laws in being. In which part I treat of the Kings Authority abstractedly from Doctrinal Religion.

This I the rather have done, that the Subjects of all conditions may observe how great the Authority and Prerogative of the King is, in dispensing with University and College Statutes, since by the plain and direct Laws that Assert the Kings Right, in opposition to all Foreign powers, his Supremacy is so Etablised in Ecclesiastical matters and causes, that it is applicable to other purposes than at the first view may appear obvious, which I leave to the discussion of those better versed in the Laws than I shall ever presume to be. Nevertheless I hope in the treating of this subject, it will be owned, that I have Introduced no Novelty, but Copy'd what is found in History or the public Records, and brought to light a Prerogative inseparable from the Royal State of our Kings, which some for want of consulting the same have not so well discerned.

It is to caution the Heads and Fellows of our most eminent Universities not to contend with their Sovereign, that I have so copiously produced Instances of the practice of former times, and have so largely treated of them before and since the Reformation.

It was for this end solely, and not in the least to erect Trophies for any Victory over the unfortunate, that I have pointed out these Sea-marks, that others may avoid dashing themselves

To the Judicious Reader.

selves against the Rock, upon which the British Monarchy is so firmly placed, that no Tempests of open Rebellion, or the highest swelling Seas, much less any single Billow can be able to shake.

It is far from my Intention in this, to enter into any dispute about the limits of Ecclesiastical or Secular power : It is sufficient that I shew it in some particulars of known practice ; without examining the grounds, any more than as declared by the positive Laws or practice of the respective Sovereigns.

I know some may look upon this as a matter treated of *ex superabundanti* ; yet I thought my self obliged so far to enter into a dissertation upon it, as I might thereby make it appear, that by the extensiveness of the Sovereignty, Universities, much more private Colleges, (both which the Law accounts among the Creatures of the Crown) must own a subjection of themselves and their private Statutes, to the King as Supreme.

Neither hath it been any desire to render the Kings Prerogative greater than the Laws and usages of our Kings do manifest that I have shewn how it hath been insisted upon, even against some exemptions of the Apostolic See, or to Establish any Paradox ; but only to Assert the just Rights of the Crown, at least according to my Reading, and do with all deference submit what I have composed, to the Judgment of the Learned in our Laws.

But to leave this ; I desire the Candid Reader will peruse the Contents of the Book in the following Pages, before he enter upon the whole, whereby he may see the connexion, and sequen-

To the Judicious Reader.

ces of the matter; and he must not expect that those Contents are exactly according to the Marginal Notes, but according to the matter treated in the several Paragraphs, and Pages; in some of which he will find some rectifyings of what by chance was mis-printed.

I must likewise here give satisfaction to the Reader why I have added an Appendix to the whole, and thereby plead my excuse, why this Treatise hath been so long Printed, in the greatest part, before it was Published: The Reasons of which are these in short.

Being desirous to obtain an exact account from the Registers of St. Mary Magdalen College, concerning Dr. Haddons being Elected upon King Edward the 6ths. Mandate, knowing the case was exactly Parallel to this in hand; I made application to the late Bishop of Oxford, and the Vice-President, but the Sicknes and Death of the first, and the taking away of some Keys where the Registers were preserved, hindered me from receiving satisfaction from the one or other: So that being unwilling to stop the Printing, I was forced to pass by that Instance, with a Reference to treat of it after; and when by applying myself to the Learned Mr. Wood, Author of the Antiquities of that University, I could get no other satisfaction, than appears by his Letter I have Printed: I began to despair of retrieving it, and so resolved to have closed all without it: Yet being very unwilling to neglect any thing I could do in a matter of such Importance, I applied myself to the Right Reverend Bishop Giffard, from whom, after his Lordships arrival I had small encouragement; but at last after repeated solicitations,
by

To the Judicious Reader.

by his Lordships directions, and the industry of a Learned Gentleman, and Conference with Mr. Wood, the Register was found, but so late as the matter could not otherwise be Inserted but in an Appendix.

I will not trouble the Courteous Reader with the distinct Reasons, why other matters are there likewise inserted; but only in general, that some of them being committed to some hands that had mislaid them, or taken them with them upon some removals from Town, I could not retrieve them when the matters were Printing which they related to; and some few of them have come to my knowledge since Writing of the rest: so that the Candid Reader must be desired to place them according to the Notes in the Margents directing for that purpose.

Lastly, I must desire the Reader will not peruse this by parcels, or come to the Reading of it with prejudice, assuring him the Author is free from passion and private design and hath endeavored to adhere to the Laws, for which purpose he hath shewn the whole to some of the eminentest in that Profession, and hath had Approbation accordingly.

N. J.

T H E

The Candid Reader is desired to Correct these following
ERRATA's with his Pen before his Perusal,
especially those marked *.

P Age 7. last line, for 14th. read 15th.

Page 24. line 21. for 11th. read 8th.

* Page 42. line 5. for *more* read *material*.

* Ibid. line 8. for *Attentatar* read *Attentata*.

* Page 71. blot out, *complaint made by the Lords Commissioners of*.

* Page 108. line 14. for *no* read *any*.

* Page 125. last line Instead of *as by the King alone*
read *as the King himself*.

* Page 144. the last line but four, for *special* read
Spiritual.

Page 152. line 16. for *Binops* read *Bishops*.

Page 161. line 20. for *declaredly* read *declared to be*.

* Page 176. lines 16. and 17. for *some one* read
summary.

Page 187. line 7. for *fuller* read *full*.

Page 257. line 25. for *Cumlative* read *Cumulative*.

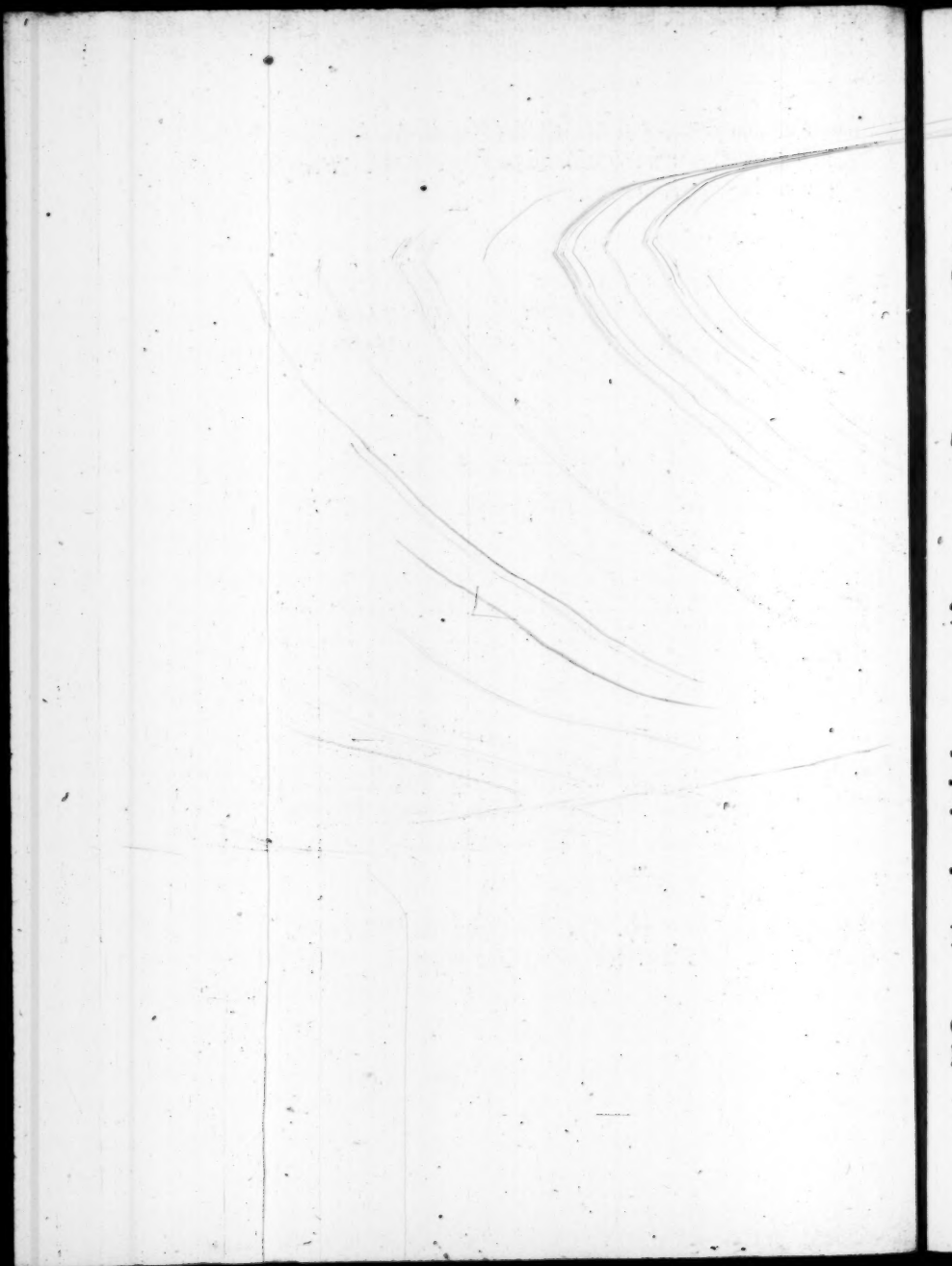
* Page 266. line 24. for *simple* read *scruple*.

* Page 303. line 24. &c. Instead of the word *Free-*
hold read *Legal Estate*, which I amend to avoid
needless Cavils, since in propriety of Law expres-
sion, nothing is reputed Free-hold which is not a
Tenancy for life.

* Page 343. line 19. for *Students* read *Statutes*.

Page 346. line 22. for *Sancti Evangelii* read *Sanctis*
Evangeliiis.

T H E



THE CONTENTS.

CHAP. I.

T*He proceedings upon the Kings Mandate for Mr. Anthony Farmer, to the time when the Lords Visitors were appointed to go to Oxford.*

SECT. I.

The Transactions from the foresaid Mandate to the Summoning the Vice-President and Fellows of St. Mary Magdalen College in Oxford before the Lords Commissioners at Whitehall. Page 1. ad pag. 20.

The Kings Mandate for Mr. Farmer. S. 1. pag. 2.

The Authors Method in this Discourse. S. 2. pag. 3.

The Bishop of *Winchesters* Letter to my Lord President. S. 3. pag. 4.

The Petition of the Vice-President and Fellows to the King. S. 4. pag. 5.

Dr. *Thomas Smith's* Paper Read to the Fellows at the Election the 15th. of *April* wrong Dated the 14th. S. 5. pag. 7.

Observations upon it. S. 6. pag. 8.

My Lord Presidents Letter to the Bishop of *Winchester*. S. 7. pag. 9.

The

THE CONTENTS.

The Bishops Answer.	<i>Ibid.</i>
Observations upon the proceedings.	§. 8. pag. 10. 11.
The President and Fellows Letter to the Duke of Ormond.	§. 9. pag. 11.
My Lord Presidents Letter to the Vice-President and Fellows.	§. 10. pag. 14.
Their Answer.	§. 11. <i>Ibid.</i>
The Case of the Vice-President and Fellows.	§. 12. pag. 15.
Clauses of the Statutes.	§. 13. pag. 17.
Address of the President and Fellows to the King.	§. 14. pag. 19.

S E C T. II.

The Proceedings before the Lords Commissioners for Ecclesiastical Affairs.

The Summons of the Vice-President and deputed Fellows to appear before his Majesties Commissioners for Ecclesiastical Causes.	§. 1. pag. 21.
The Answer of the Vice-President and deputed Fellows, why they did not obey the Kings Mandate.	§. 2. pag. 22.
Copy of the Statute for Regulating the Election of a President.	§. 3. pag. 26. to 34.
The proceedings of the Lords Commissioners to pronounce the Election void.	§. 4. pag. 35.
The Sentence of Suspension of Dr. Charles Aldworth, and Dr. Henry Fairfax.	§. 5. pag. 35.
The Order of the Lords Commissioners for publication.	pag. 36.
Mr. Atterbury's Letter, how the Fellows received the Order.	§. 6. pag. 37.

The

THE CONTENTS.

The Orders of the Lords Commissioners concerning <i>Mr. Farmer.</i>	S. 7. pag. 38.
Citation of the Fellows for disobeying the former Order of the Lords Commissioners.	pag. 39.
The Kings Inhibition to the Fellows, &c.	S. 8. pag. 40.
Order to Mr. <i>Atterbury</i> to affix the Order concerning Dr. <i>Pudsey</i> and Dr. <i>Fairfax</i> , upon the College Gates.	S. 9. pag. 41.
The Answer of the Fellows, why they obeyed not the Order, of 22d. of June.	S. 10. pag. 42.

SECTION III.

<i>The Transactions from the Mandate for the Bishop of Ox- ford to the Lords Commissioners Visiting of St. Mary Magdalen College.</i>	pag. 43.
---	----------

The Kings Mandate to the Fellows to Admit the Bi- shop of Oxford President.	S. 1. pag. 44.
The Lord Presidents Letter to the Senior Fellow, &c.	S. 2. pag. 45.
Dr. <i>Pudsey's</i> Answer to it.	S. 3. pag. 46.
Bishop of Oxforde Letter to the Senior Fellow.	S. 4. pag. 47.
Dr. <i>Pudsey's</i> Answer.	pag. 48.
My Lord Presidents Letter to the Bishop of Oxford.	S. 5. pag. 49.
Papers of Some of the Fellows, why they cannot Elect the Bishop of Oxford President.	S. 6. pag. 50.
Observations upon it.	pag. 51.

THE CONTENTS.

CHAP. II.

THe proceedings of the Lords Commissioners in the Local Visitation of St. Mary Magdalen College in Oxford. pag. 52.

SECT. I.

The Transactions from the Citation sent October 17th. 1687. to the 19th. of the same Month. pag. 52.

Citation of Mr. John Hough, the Fellows, Schollars and other Members of St. Mary Magdalen College.

S. 1. pag. 53.

The proceedings of the Lords Commissioners, Friday Morning October the 21st.

S. 2. p. 54.

The Bishop of Chesters Speech. pag. 55.

Proceedings Friday Afternoon. pag. 62.

Proceedings Saturday Morning, Octob. 22^d. S. 3. Ibid.

Proceedings Saturday Afternoon. pag. 63.

The Lords Commissioners Letter to my Lord President, October 22^d.

S. 4. pag. 63.

The Account sent of the Lords Commissioners proceedings till the Evening of October 22^d. with some supplemental Additions from the Bishop of Chesters Notes and Dr. Thomas Smiths Diary.

S. 4.

pag. 65. to 71.

The Vice-Chancellor of Oxfords *Programma*, which was published by the Vice-Chancellor without any complaint of the Lords Commissioners as by mistake is expressed.

S. 5. pag. 71.

My

THE CONTENTS.

- My Lord Presidents Answer to the Lords Visitors Letter of the 22^d. of *October*. §. 6. pag. 72.
- Dr. *Staffords* paper in defence of Dr. *Houghs* Election, &c. §. 7. pag. 74.
- The Bishop of *Oxfords* Proxy. §. 8. pag. 76.
- The Kings Mandate to the Lords Visitors, to Admit the Bishop of *Oxford*, or in his absence by his Proxy if the Fellows refuse to Admit him. §. 9. pag. 77. 78.
- Dr. *Thomas Smith's* Answer about Admitting the Bishop of *Oxford*. §. 10. pag. 79.
- The Admission of the Bishop of *Oxford* by his Proxy. pag. 80.
- Other proceedings on *Tuesday* Morning. §. 11. p. 81.
- Submission of the Fellows to the Bishop of *Oxon* conditional. §. 12. pag. 81.
- Sentence against Dr. *Henry Fairfax*, and his protestation against the proceedings of the Lords Commissioners. §. 13. pag. 84. 85.
- Papers from Mr. *John Gilman*, Dr. *Thomas Smith*, and Mr. *William Craddock*. §. 14. pag. 86. 87.
- The Answer of the Lords Commissioner to the Lord Presidents Letter of the 23^d. of *Octo*. §. 15. pag. 87.
- The Account the Fellows gave in concerning their Hospitality and Charities. §. 16. pag. 90. 91.
- Dr. *Thomas Smiths* paper upon the same account. §. 17. pag. 92.
- Proceedings *Thursday* Morning *Octo*. 27. §. 18. pag. 94.
- The Lord Presidents Answer to the Lords Commissioners Letter of the 25th *Octo*. §. 19. pag. 94. 95.
- Proceedings *Friday* Morning, *Octo*. 28. §. 20. pag. 96.
- A paper of the Fellows Justifying their Election. §. 21. pag. 95. 97.
- The Fellows refusing to submit to what was required. §. 22. pag. 95.
- Dr.

THE CONTENTS.

- Dr. *Bayleys* explication of his Submission. §. 23. pag. 98.
Mr. *George Fulhams* Answer to the Question about
submission, and the Sentence of Expulsion against
him. §. 24. pag. 100.

SECT. II.

- The Second Visitation by Adjournment of St. Mary Mag-
dalen College, by the Lords Commissioners.* pag. 101.
- The Kings Mandate for Mr. *William Joyner* and Mr.
Job Allibon. §. 1. pag. 102.
- The Lord Bishop of *Chesters* Speech. §. 2.
pag. 103. to 112.
- The form of the Petition and Submission required of
the Fellows, and Mr. *Thompsons* Answer. §. 3.
pag. 112. 113.
- Dr. *Aldworths* Reply, and Justification of himself.
§. 4. pag. 114.
- The Decree of the Lords Commissioners of Expulsion
of the Fellows that would not submit. §. 5. pag. 116.
- The protestation of the Expelled Fellows. §. 6. pag. 117.
- Mandates for other Fellows. *Ibid.* and pag. 118.
- The proceedings of the Lords Commissioners at
Whitchall, after the return of the Lords Visitors
from *Oxford.* §. 7. pag. 118. 119.
- The Sentence of Incapacitating the Expelled Fellows.
§. 8. pag. 120. 121.
- The Method the Author intends to proceed in.
pag. 122.

THE CONTENTS.

CHAP. III.

O*F the Nature and Constitution of the Societies of the Liberal Arts, such as Colleges and Universities are.*
pag. 123.

SECT. I.

Concerning Incorporations in General, and the Privileges granted to the Universities of Oxford and Cambridge by our Kings, or by the Popes.
pag. 123.

How all sorts of Societies and Corporations are Founded by the King. §. 1. pag. 123.

How all Colleges and Corporations are made such by the King. §. 2. p. 124.

Things requisite to a Corporation. §. 3. pag. 125.

The end for which Corporations are constituted. §. 4. pag. 126.

The power of conferring Degrees in Universities conferred on Subjects by the Sovereign. §. 5.
pag. 127. 128.

SECT. II.

From whom the University of Oxford hath had its Privileges.
pag. 129.

The Kings of England sole Donors of privileges during the Saxons time. §. 1. pag. 129.

Privileges granted by Kings after the Conquest. §. 2. pag. 130.
The

THE CONTENTS.

The Pope confirms them.	pag. 131.
King <i>Henry 3d.</i> grants privileges during his pleasure.	
	§. 3. pag. 132.
Privileges granted by King <i>Edw. 1st.</i>	pag. 133. And
King <i>Edw. 2d.</i>	pag. 134. And King <i>Edw. 3d.</i> <i>Ibid.</i>
And King <i>Rich. 2d.</i>	§. 4. pag. 135.
Inferences from the before recited Charters.	pag. 136.
And from those of King <i>Hen. 4th.</i> and King <i>Hen. the 5th.</i> and King <i>Hen. 6th.</i>	§. 5. pag. 137.
The Method of Founding a College.	§. 6. pag. 137. 138.
The confirmation of Pope <i>Sixtus</i> the 4th.	§. 7. pa. 138.
The Charters of King <i>Henry</i> the 8th. and his power over the Universities.	§. 8. pag. 140.
Wrong Printed.	§. 9.
King <i>Hen. 8th.</i> retaining the Statutes of the University.	§. 10. pag. 141.
Falsly.	§. 11.
The King seizeth all the privileges:	§. 11. pag. 142.

C H A P. IV.

C Concerning the Visiting of the Universities, and particularly of that of Oxford. pag. 144.

S E C T. I.

Concerning the Kings Supremacy, and Power in Ecclesiastical Causes and Visitations. pag. 144.

What power the Kings of England used before the Conquest. §. 1. pag. 144.

In what particulars some of our Kings exercised a power in Ecclesiastical matters. §. 2. pag. 145.

Of

THE CONTENTS.

Of Investiture of Bishops.	§. 3. pag. 148.
Concerning the Admitting the Popes Legats here.	<i>Ibid.</i> and 149.
Disputes betwixt the Arch-Bishop of <i>Canterbury</i> and the Popes Legats.	§. 4. pag. 150.
How the Popes Legats exercised greater power in latter times.	§. 5. pag. 151.
The Arch-Bishop of <i>Canterbury</i> Created <i>Legatus Natus</i> .	§. 6. pag. 152.
When the Style of <i>Legatus a Latere</i> , began to be used here.	§. 7. pag. 153.
How the Legats power was allowed by the King in Visitations, &c.	<i>Ibid.</i> and pag. 154.
Concerning Arch-Bishops and Bishops Visitations.	§. 8. pag. 155.
How the King promoted Bishops, &c.	§. 9. pag. 155.
How far the Canons were allowed here.	§. 10. pag. 155. 156.
Secular Courts Judged here what was to be held of Ecclesiastical Cognizance.	§. 11. pag. 156.
The Application of this Discourse to the matter of Visitation, &c.	§. 12. pag. 157.
In what particulars our Kings claimed not Ecclesiastical Administration.	§. 13. pag. 157. 158.
How the Pope obtained greater power.	§. 14. pag. 158.
The Kings Supremacy asserted by King <i>Henry the 8th</i> .	§. 15. pag. 158. 159.
The Kings power of Visiting.	§. 16. pag. 159.
The Kings power in Ecclesiastical matters, and his being Supreme Visitor.	pag. 160.

S E C T. II.

Who Exercised Jurisdiction, by way of Visitation or otherwise.

THE CONTENTS.

*therwise over the Universities, from the 11th. of
King John, to the Year 1390. 14 Ric. 2. pag. 161.*

- The Pope and Legat Suspend Offenders. §. 1. pag. 161.
Cardinal *Otho* Visits by Legatin Authority. §. 2. pag. 163.
The Bishop of *Lincoln* Ordinary Visitor of the University of *Oxford*. §. 3. pag. 164. 165.
The Bishop of *Lincoln* sometimes opposed. §. 4. p. 166.
The Arch-Bishop of *Canterburys* Visitation of *Oxford*. §. 5. pag. 167.
Disputes betwixt the Bishop of *Lincoln* and the University and the Arch-Bishop with both about Visitation. §. 6. pag. 168. 169.
The University subject to several Visitations. pa. 169.
The disturbance the Dominicans made in the University of *Oxon*, for settling which the King and Pope shewed their Authority. §. 9. pag. 171. 172.
Appeals to the Pope. §. 10. pag. 174. 175.
Differences betwixt the Arch-Bishop of *Canterbury* and Bishop of *Lincoln* about Visitation, and the King Interposeth his Authority. §. 11. pag. 172.
Disturbances in *Queens* College, and the proceedings of the Local Visitor, and the Kings Orders there-upon. §. 12. pag. 175.
Arch Bishop *Courtneys* Visitation. §. 13. pag. 176.

S E C T. III.

*Who Visited the University of Oxford after the 13th.
of King Richard the Seconds time to the beginning of
King Henry the 8ths. Reign. pag. 178.*

The King redresseth certain grievances complained of

THE CONTENTS.

of by both Universities.	§. 1. pag. 179.
What is to be observed from thence.	§. 2. pag. 180.
The Kings Mandate to extirpate <i>Lollards</i> out of the University.	§. 3. pag. 181.
Arch-Bishop <i>Arundel</i> Visiting by the Kings leave, Commands the University to obey.	§. 4. pag. 182.
The Kings power not lessened by such Visitations.	pag. 184.
Arch-Bishop <i>Arundels</i> Visitation resisted.	§. 5. pa. 185.
The King hears the Cause of the Universities claiming exemption, and determins it.	pag. 186.
An account of this whole matter in Parliament.	§. 6. pag. 186.
The King may deprive the University of privileges for dil-obedience.	pag. 187.
An account of a latter Visitation ,	12 H. 4. §. 7. pag. 188.
The Reason why the Author hath given so large an account of this Controversie.	§. 8. pag. 189.
Mr. <i>Pryns</i> mis-application of the Records about this.	pag. 189.
The King gives Sentence for the Arch-Bishop of <i>York</i> against the Arch-Bishop of <i>Canterbury</i> , and gives leave to the Bishop of <i>Lincoln</i> to Visit.	§. 9. pa. 191.
The Visitation of the Metropolitan and Diocesan by the Canons.	§. 10. pag. 191. 192.

CH A P. V.

C Concerning the Visitations of the University of Oxford since the Renouncing the Popes Supremacy in England. pag. 193.

THE CONTENTS.

SECT. I.

Concerning the Visitations in the Reigns of King Henry the 8th. and King Edward the 6th. pag. 193.

The Charters and Bulls of the University of Oxford Surrendered to the King and Cardinal *Wolsey* for him, and the Kings Visiting the University.

S. 1. pag. 194.

The usual Method of proceeding in Visitations of the Universities.

pag. 194. 195.

The Commission of King *Edw. 6th.* to Visit the University of *Oxford.*

S. 2. pag. 196.

The Kings Supremacy and Authority to Visit.

pa. 196.

The places and persons to be Visited.

S. 3. pag. 197.

The punishments are Deprivation, Sequestration of profits, and Ecclesiastical Censures, &c.

S. 4.

pag. 198.

Several other powers granted to the Visitors.

S. 5. pag. 199.

Other powers.

S. 6. pag. 200.

Further powers given.

S. 7. pag. 200. 201.

Command to Sheriffs, to Assist Non-obstante, &c.

S. 8. pag. 201.

What may be observed from this Commission.

S. 9. pag. 201. to 205.

What the Commissioners did in this Visitation: A

Suspension of the Execution of Statutes.

S. 10. pag. 205. 206.

A new Book of Statutes made.

S. 11. pag. 206.

The severe proceedings of the Commissioners.

S. 12. pag. 207.

SECT.

THE CONTENTS.

SECT. II.

The Visitation in Queen Maries Reign. pag. 208.

Queen *Maries* Visitation by Bishop Gardyner. §. 1.

pag. 208.

Cardinal Pools Visitation.

§. 2. pag. 209.

The Questions proposed.

pag. 210.

The Cardinal appoints new Statutes. §. 3. pag. 210.

The Cardinal Visiting as the Popes Legat. pag. 211.

SECT. III.

The Visitations in Queen Elizabeths Reign. pag. 212.

Queen *Elizabeths* Inhibition. §. 1. pag. 212.

Queen *Elizabeth* appoints Visitors. §. 2. pag. 212.

The Heads of Colleges and others Expelled.

§. 3. pag. 213.

Letters about the Visitation of *Cambridge* by Dr.

Parker; after Arch-Bishop of *Canterbury*.

§. 4. pag. 215.

Some observations concerning that Visitation.

pag. 218.

An account of the Visitation of *Merton* College.

§. 5. pag. 218.

Observations upon it.

pag. 219.

Secretary *Cecil*s Letter about Visitation. §. 6. pag. 220.

Disturbances about the Election of a President in *Corpus*

Christi College, and the Queens Mandate for E-

lecting. §. 7. pag. 221.

The Queen appoints Visitors. *Ibid.*

What the Earl of *Leicester* did as Chancellor. §. 8. *Ibid.*

SECT.

THE CONTENTS.

SECT. IV.

A further account of the Visitations of the Universities or single Colleges together with the Alteration, Abrogating, or new Imposing of Statutes of the Universities by the Sovereign. pag 223.

An account of what is to be Treated of in this Section :
The Reason why Princes should have a greater power over Universities. §. 1. pag. 223. 224.

Queen *Elizabeths* Letters Patents for confirming the Statutes of the University of *Cambridge* altered by her. §. 2. pag. 225.

A Controversie betwixt Dr. *Humfreys* President, and some Fellows of *Magdalen* College. §. 3. pag. 227.

An account given of it in the first paper. §. 4. pag. 228.

The second paper. §. 5. pag. 231. to 236.

The third paper. §. 6. pag. 236. to 240.

Abstract of Secretary *Walsinghams* Letter about this matter, and the Bishop of *Winchesters* Answer. §. 7. pag. 241.

Observations from these strict Statutes. §. 8. p. 242. 243.

The Case of Mr. *Wilson* chosen Rector of *Lincoln* College. §. 9. pag. 244.

Dr. *Fulks* Letter about the Queens appointing Visitors of *Cambridge*. §. 10. pag. 246.

Necessity by Visitation to alter Statutes tho' the University have power to do the same. *Ibid.*

Statutes about Apparel. §. 11. pag. 248.

Concerning the need of confirmation of the Spiritual Jurisdiction to the Chancellor, &c. pag. 248.

The Kings appointing constitutions of the University without Visitors. §. 12. pag. 249.

Con-

THE CONTENTS.

Concerning some Visitations in King <i>Charles</i> the firsts time.	pag. 250.
Concerning Arch-Bishop <i>Lauds</i> Visitation of the Universities <i>jure Metropolitico</i> .	pag. 250. 251.
King <i>Charles</i> the firsts determination concerning the Arch-Bishops Visitation of the Universities.	S. 13. pag. 252.
Considerations thereupon.	pag. 253.
The Form of a Commission from King <i>Charles</i> the 2d. for Visiting a free Chappel.	S. 14. pag. 254.
Inferences from this Record.	pag. 255.
The Conclusion of this Section.	pag. 255.
The Opinion of an eminent Lawyer as to the Kings power over Corporations, Colleges, &c.	pa. 255. 256.
The Opinion of several Judges in this matter, confirming what hath been Asserted in the preceding discourse.	S. 15. pag. 257. 258. 259.

CHAP. VI.

Concerning the Kings of England's Dispensing with the Statutes of the Universities by their Mandates.	pag. 260.
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SECT. I.

Concerning the Kings dispensing power in General, and in some particulars, to the beginning of King <i>Charles</i> the 2ds. Reign.	pag. 260.
Concerning the Kings dispensing power in General.	S. 1. pag. 260.

Why,

THE CONTENTS.

Why the Author treats not largely on this subject.	S. 2. pag. 262.
Some observations upon the 25 H. 8. C. 21.	S. 3. pag. 262.
That the Statute is Founded upon the usage of a dispensing power.	<i>Ibid.</i>
That the Pope exercised a dispensing power by sufferance in Derogation of the Royal Authority.	pag. 263.
The Ecclesiastical power originally in the King according to this Act.	S. 4. pag. 263.
The Kings Prerogative not restrained by Acts of Parliament in several cases.	pag. 264.
Where to find Arguments for the dispensing power.	S. 5. pag. 265.
Some Paragraphs of the Act 8 Eliz. C. 1. explained.	<i>Ibid.</i>
The Queens power in matters Ecclesiastical Supreme and absolute.	pag. 266.
Inferences from this Statute.	pag. 266.
Observations upon the Statute 25 H. 8. C. 1. by Judge <i>Hobart</i> .	pag. 267.
Greater powers seem to be Implied in Section 17. and 18. of this Statute worthy consideration.	pag. 267.
Some further observations upon the Statute 25 H. 8. C. 21.	S. 6. pag. 267.
An account of the Queens Mandate about Electing a Master of St. <i>Johns</i> College in Cambridge.	S. 7. pag. 269.
The Bishop of <i>Londons</i> Testimony, that the King hath dispensed with College Statutes.	S. 8. pag. 270.
A Mandate dispensing with Incapacities to receive Degrees.	S. 9. pag. 270.
A Mandate for a Schollar of St. <i>Mary Wintons</i> College without Examination.	pag. 271.

THE CONTENTS.

- A Mandate dispensing with the Incapacity by reason of the County. *Ibid.*
 An acknowledgment from St. Johns College in Cambridge, that the King may dispense with College Statutes. §. 10. 272.
 A Senior Sophister may take Bachellor of Arts Degree by dispensation. pag. 272.

S E C T. II.

Concerning Dispensations with the Statutes of the Universities, or particular Colleges, from the Year 1670. 22d. of King Charles the Second, to this present time. pag. 273.

Mandate for Dr. Lloid, taking his Degree two years before the Statutes allow. §. 1. pag. 273.

The words of Dispensation to be noted. §. 2. pag. 244.

Mandate for Thomas Chapman to have the Degree of Master of Arts without performing exercises. pag. 274.

Dispensations for Charles Otway, otherwise Incapable, either as to the County or his Years. pag. 275.

Mandate for Mr. Josuah Ratcliff, contrary to the Statutes of the College. pag. 275.

Dispensation for Mr. Edward Finch not being of the County, &c. for Dr. Hawkins not to perform exercises. §. 3. pag. 276.

Dispensing with the Statutes of St. Mary Magdalen College for Mr. Craddock. *Ibid.*

A Statute of the Lady Margaret the Foundress dispensed with. §. 4. pag. 277.

Concerning conferring Honorary Degrees. pag. 277.

THE CONTENTS.

Dispensation with Statutes for entring into Orders.	§. 5. pag. 278.
Another of the same nature for Sir <i>John Lydcote</i> , with it's revocation.	pag. 278.
A Mandate endeavored to be eluded, re-enforced.	§. 6. 279.
The Mandate for removing the Duke of <i>Monmouth</i> from being Chancellor, and substituting the Duke of <i>Albemarle</i> .	§. 7. pag. 280.
The Kings power to Interpret Statutes and nominate Chancellor.	pag. 280. 281.
The King grants power to the Univerlity to confer Degrees upon such as the Chancellor or Vice- Chancellor shall recommend.	§. 8. pag. 281:
The re-enforcing of it.	pag. 282.
The Kings Mandate for making new Statutes for re- gulating Degrees at the Universities Petition.	§. 9. pag. 282.
A Command to the Univerlity to grant a dispensati- on.	§. 10. pag. 283.
The revoking of a Mandate.	pag. 284.
The Kings Order that Mandates should not be grant- ed without Testimonials of the Arch-Bishop of <i>Canterbury</i> and the Bishop of <i>London</i> .	§. 11. pa. 284.
The recalling of a Mandate after the former.	§. 12. pag. 285.
The Conclusion.	§. 13. pag. 286.

C H A P. VII.

THe Answer to the Arguments used by the Vice-Pre-
sident and Fellows of *St. Mary Magdalen College*,
in defence of their proceedings.

pag. 288.
S E C T.

THE CONTENTS.

SECT. I.

Answer to what is urged in their Justification from the Obligation of their Oaths to observe their Statutes. p. 288.

The Objection concerning the Statutable qualification of the persons for whom the King granted Mandates. *§. 1. pag. 288.*

The Answer of the definition of an Oath, and the divisions of it, and who may vacate them. *§. 2. p. 289.*

Oaths subject to the power of a Superior. *pag. 290.*

The Sovereign hath power to alter and adnul Statutes. *pag. 290.*

A Statute being revoked, the Swearer no longer obliged to observe it. *§. 3. pag. 291.*

So by the Sovereigns prohibition the execution. *pag. 292.*

The Superior can remit the obligating of an Oath. *§. 4. pag. 292.*

The Tacit condition of the Superiors allowance always to be understood. *pag. 293.*

This head further Insisted upon. *§. 5. pag. 294.*

The reason of it. *§. 6. pag. 295.*

The Objection, that the Kings Tacit consent is Implied, and the Oath before the Election Answered. *§. 7. pag. 295.*

The Objection Answered, that the Fellows Swear to Admit no dispensation. *pag. 296. to 300.*

THE CONTENTS.

S E C T. II. *wrong put* S E C T. III.

Some other Objections considered, either relating to the Visitation in General, or urged in defence of some particular Member of the Society. pag. 300.

A second Objection Answered, that the Local Visitor should have first ordered the business before the Lords Commissioners had taken cognizance of it. §. 1. pag. 300.

The Objection Answered, that Dr. *Hough* was not cited nor appeared by Proxy. §. 2. pag. 301.

The Objection, that Dr. *Hough* was Ejected out of his Free-hold without Tryal at Common Law. §. 3. pag. 302.

Answer to the Objection, that a Mandate doth not imply a prohibition. §. 4. pag. 304.

In some Grants a reservation of power to dispense with Statutes. pag. 305.

What power the Emperors Edicts and Mandates have in Civil Law. pag. 305. 306.

That a Mandate Implies a prohibition. §. 5. pag. 307.

The Judgment of Civilians in this matter. pag. 308.

An express and Tacit Inhibition. §. 6. pag. 309.

Dr. *Staffords Dilemma* Answered. pag. 309.

A parallel Case of Dr. *Haddon* in King *Edward* the 6ths. time. §. 7. pag. 310.

The Reason why the Author Inserted this no sooner. pag. 310.

An Abridgment of Dr. *Haddons* Case. pag. 311.

A fuller account of it to be in the Appendix. pag. 312.

The Sixth Objection in behalf of Dr. *Fairfax*.

§. 8. pag. 312.

The

THE CONTENTS.

- The Answer to it. pag. 313.
 Dr. *Fairfax* punished for dis-obedience, and denying the Lords Commissioners Authority. *Ibid.*
 Observation from the Civil Law upon it. pag. 314.
 The Reason why the Kings Mandates ought not to be disputed. pag. 315.
 The seventh Objection out of the *Oxford* Relation. S. 9. pag. 316.
 The Answer. S. 10. pag. 317.
 The Kings Prerogative a part of the Law of the Land. *Ibid.*
 The Kings of *England* grant Commissions of Visitation in several cases. *Ibid.*
 Inferences from the foregoing Records. S. 11. pa. 318.
 The Kings power in Suspension and Deprivation of Bishops, &c. by Commissioners, consequently may do it on Members of Colleges. pag. 319.
 Whether Colleges be of Temporal or Spiritual Nature. S. 12. pag. 320.
 The Kings Prerogative is not against *Magna Charta*. pag. 321.
 The Eighth Objection concerning the liberty of Appeals. S. 13. pag. 321.
 Dr. *Coveney* Case urged. pag. 322.
 The Answer. S. 14. pag. 322.
 The Method of Appeals according to the Statute 25 H. 8. C. 19. pag. 322.
 Appeals to the King in person. pag. 323.
 The Case of Dr. *Coveney* not rightly stated. pag. 324.
 The Artifice used by those of *St. Mary Magdalen* College in citing this Case. pag. 324.
 The Case of *Charles Cottington* Esq; about Appeals. S. 15. pag. 325.

The

THE CONTENTS.

The Petition of Mr. <i>Cottingham</i> .	<i>Ibid.</i>
Referred to the Committee of privileges.	pag. 326.
The Earl of <i>Essex</i> 's Report from that Committee.	<i>Ibid.</i>
The House of Lords Order upon it.	<i>Ibid.</i>
The Ninth Objection, that matter of Fact proves not right.	§. 16. pag. 327.
The Answer.	pag. 327.
If the Kings Prerogative in this case had been against Law, it would have been questioned at some time in the Courts of Law.	pag. 328.
The King in Possession of this Prerogative.	<i>Ibid.</i>
The Original Prerogative of dispensing in the King.	<i>Ibid.</i>
A Transition to what is to be Treated of in the Appendix.	<i>Ibid.</i>

Contents of the APPENDIX.

A Mandate for replacing a Graduate Expelled.	§. 1. pag. 329.
Inferences from this Record.	§. 2. pag. 331.
The Prerogative of the King over the University cleared in four particulars by this Mandate.	pag. 331.
The King Founder of Colleges.	§. 3. pag. 332.
The Kings Mandate for taking off an Amercement from the Prior of <i>St. Swithins</i> .	<i>Ibid.</i>
The Kings Mandate to enjoyn the Provost and Members of <i>Queens College</i> in <i>Oxford</i> to submit to the Visitation of the Local Visitor.	pag. 333.
<i>Nota</i> , that dis-obedience to the Kings Mandate is Styled Rebellion.	pag. 333.
The	

THE CONTENTS.

The Interpretation of a Statute of St. Johns College
in Cambridge by the Bishop of Ely their Visitor.

S. 4. pag. 334.

Observations upon the Interpretation of the Local
Visitor.

pag. 335.

Extracts of some Statutes.

S. 5. pag. 335.

How the Fellows of *Magdalen* College cannot justify
these adhering to the Literal and Grammatical
Sense of their Statutes, nor that they cannot be dis-
pens'd with.

pag. 335.

Transcript of the Statutes to be served with Males
only.

S. 6. pag. 336.

Statutes against Dice and Cards.

S. 7. pag. 337.

The penalties upon them.

pag. 339.

What is to be observed from them.

Ibid.

Statute concerning Repair.

S. 8. pag. 340.

About saying of Masses, solemn Obits, &c.

S. 9. pag. 340. 341.

Concerning purchasing Fellowships.

pag. 341.

Concerning Dr. *Haddon*.

S. 10. pag. 342.

The Petition of the College to King *Edward* the 6th.

Ibid.

The different way of the Societies proceedings then,
from the late Fellows proceeding to Election con-
trary to the Kings Mandate.

pag. 343.

Note the grounds of the Societies obedience, was the
Kings special Mandate by his Supreme Authority,
and his dispensing with the Impediments of their
Statutes and their Oath.

pag. 344.

Inferences from this.

Ibid.

The Queen Commands Dr. *Bond* to be Admitted
President, and declares the Election of Mr. *Smith*
void.

S. 11. pag. 345.

This.

THE CONTENTS.

- This Mandate is very pertinent like that of our King for the Bishop of *Oxford* which was obeyed by the Society in the Queens time, and of which the late Fellows could not be Ignorant. *pag.* 346.
- The Queen dispenseth with the Statutes Sworn to by the Society, and all other thing, cause or matter to the contrary whatsoever. *pag.* 346.
- The Fellows were all present at Dr. *Bonds* taking his Oath, and he was received and Admitted President according to the Queens Mandate. *Ibid.*
- The Inferences from this Mandate. *Ibid.*
- An Historical account of King *Charles* the Firsts dispensing with a Statute of *Emanuel* College in *Cambridge*. *S.* 12. *pag.* 347.
- The Petition of the Master and Fellows of *Emanuel* College, to the Lord Chancellor, and the grounds of it. *S.* 13. *pag.* 348.
- Nine Reasons for the Petition. *pag.* 349.
- Observations upon the Petition. *S.* 14. *pag.* 350.
- Dr. *Brady's* Account of the Kings Nominating the Provost of King's College in *Cambridge*. *S.* 15. *pag.* 352.

THE

THE
KING'S
Visitatorial Power
ASSERTED, &c.

CHAP. I.

The Proceedings upon the Kings Mandate for
Mr. Anthony Farmer, to the time when the
Lord's Visitors were appointed to go to
Oxford.

SECT. I.

*The Transactions from the foresaid Mandate to the Sum-
moning the Vice-President and Fellows of St. Mary
Magdalen College in Oxford before the Lords Com-
missioners at Whitehall.*

UPON the Death of Dr. Henry Clark late
President of St. Mary Magdalens College in
Oxford, the King was Graciously pleased to Grant
this following Mandate.

B

James

JAMES R.

A Copy of
the Kings
Mandate for
Mr. Farmer.

Trusty and Well-beloved, We Greet you well, Whereas We are well satisfied of the Piety, Loyalty, and Learning of Our Trusty and Well beloved *Anthony Farmer*, Master of Arts of that our College of *St. Mary Magdalen*. We have thought fit hereby effectually to recommend him to you for the place of President of Our said College, now void by the Death of *Dr. Clark* late President thereof; ~~Willing, and Requiring~~ you forthwith, upon Receipt hereof, to Elect, and Admit him the said *Anthony Farmer* into the said place of President, with all and singular the Rights, Privileges, Emoluments and Advantages thereunto belonging; any Statute, Custom, or Constitution to the Contrary in any wise notwithstanding, where-with We are Graciously pleased to dispense in his behalf; And so not doubting of your ready Compliance herein, We bid you Farewell. Given at our Court at *Whitehall* the 3th. Day of *April* 1687. In the Third Year of Our Reign.

To Our Trusty and Well-beloved the Vice-President and Fellows of *St. Mary Magdalen College of Our University of Oxford*.

By his Majesties Command.

Sunderland P.

§. 2.
The Authors
account of his
method of
proceeding in
this discourse.

I Have Inserted this Mandate at length as I shall the rest of the Letters and Dispatches, because there being nothing that I know of Printed of a Visitacion, whereby the curious may be satisfied in the very Forms of Address and Proceedings; I thought it

it might be grateful to such, and might be Instructive to after times and those who have not access to the Secretaries or Paper Office: and I have kept my self as much as I could, to the Originals and Registers, that as to matters of Fact none might have occasion to find fault with me for giving a partial account, neither have I omitted the stress of the Pleadings by Dr. *Hough*, or the Vice-President or Fellows; and tho' I have not Interrupted the Series of the Discourse by answering the Arguments as they were Insisted upon; yet I have in the close of the Discourse summed up all that they could or did say by way of Objection, and given such Answers to them as the matter required, and shall take notice of the late Treatise, called *A Relation of the Proceedings, &c. Containing only matters of Fact*, published on purpose to make the generality of the people favor the Ejected. Whereas I hope to make it appear, that the King might have proceeded in a summary way, and if he had pleased inflicted severer punishments upon them than the Commissioners have done, and tho' at some times there seems to be a dutiful behavior in the Fellows, and expressions that were agreeable to the condition of humble Subjects, and a plea of tenderness of Conscience in not daring to break their Oaths, yet in effect whenever they were put upon a pinch, whether they would yield to the King's Authority, and acknowledge themselves to have acted contrary to their Duties, they never would own they had been in the wrong, which was the true cause why those that refused to subscribe the submission that was at last proposed to them were so Expelled, and however some might at first Interpose for them, as the Bishop of *Winchester* did in the following Letter; yet in the

progress of this Discourse I shall make it clear, that in former times greater punishments than that of Expulsion, even to Imprisonments, have been Inflicted upon such as have shewed less obstinacy and contempt of the Authority of their Sovereign.

I now proceed to the Bishop of *Winchesters* Letter to my Lord President upon the first noise of the Mandate.

My Honored Lord.

6. 3.
The Bishop of
Winchesters
Letter to my
Lord Presi-
dent.

(a) The con-
trary to this
will be made
out in Anci-
ent and late
times by fe-
veral instan-
ces of this
College and
others.

THE Obligation I have upon me as Visitor of *St. Mary Magdalen College Oxon* occasions this Address: For I am informed that great endeavors are used with his Majesty to Recommend one Mr. *Farmér*, who is not at present, nor ever was, Fellow of that College, to be President of it, which is directly contrary to the Statutes of the Founder, as I am confident some who promote Mr. *Farmér's* Interest cannot be Ignorant of; And were there not many persons, now actually Fellows and several who have formally been (in particular the Bishop of *Man* and Dr. *Jessop*) very Eminent for their Learning and Loyalty, and every way qualified according to the Statutes, I should not press your Lordship to lay the concern of the College (which hath upon all occasions expressed it's Zeal and forwardness in defence of the Crown, and as I particularly know in the great affair of the Succession) before his Majesty, who I hope will leave them to the Rules of their Statutes which have (a) hitherto (excepting in the times of Rebellion) been constantly observed; and which will be the highest Satisfaction to that truly Loyal University, and pro-

promote his Majesties service, which has always been the endeavor of,

Farnham Castle

April 8th. 1687.

Your Lordships most
humble Servant.

To the Right Honorable the
Earl of Sunderland Pre-
sident of the Council, and
One of his Majesties Prin-
cipal Secretaries of State.

These

P. Winchester.

I now shall proceed to give an account what the Vice-President and Fellows did, and begin with their Petition to the King upon their notice of the Kings Mandate.

To the King's Most Excellent Majesty.

The Petition of the Vice-President and Fellows of St.
Mary Magdalen's College in Oxford.

Most Humbly Sheweth.

VVE have been Credibly Informed, that §. 4.
Mr. *Anthony Farmer*, who was never of
our Foundation, has obtained your Majesties Re-
commendation to be President of this your Majesties
College, in the Room of Dr. *Henry Clark* lately
Deceased.

We do therefore with all Submission, as becomes
your most Dutiful and Loyal Subjects, most humbly
represent to your Sacred Majesty, that the said Mr.

Anthony

The Kings Visitation Chap. 1. §. 1.

* Not Toleration as the Oxford relation hath it.

Anthony Farmer is a person in several respects incapable of that Character, according to our Founders Statutes, and do most earnestly beseech your Majesty, as your Majesty shall judge fittest in your most Princely Wisdom, either to leave us to the discharge of our Duty, and Consciences, according to your Majesties late Most Gracious * Declaration and our Founders Statutes, or to Recommend such a person who may be more serviceable to your Majesty and this your Majesties College.

And Your Majesties Petitioners shall ever Pray, &c.

Charles Aldworth, V. P.
Henry Fairfax, S. T. D.
Alex. Pudsey, S. T. D.
Tho. Smith, D. D.
John Smith, D. D.
Tho. Bayley, D. D.
Tho. Stafford, L. L. D.
Main. Hammond, S. T. D.
Rich. Strickland, M. A.
Henry Dobson, M. A.
James Bayley, M. A.

John Davys, M. A.
Jas. Thompson, M. A.
Francis Bagshaw, M. A.
James Fayrer, M. A.
Joseph Harwar, M. A.
Tho. Ludford, M. A.
Tho. Goodwin, M. A.
Rob. Hyde, M. A.
Edw. Terbury, M. A.
Rob. Holt, M. A.
Stephen Weelkes, M. A.

§. 5. **T**He foresaid Petition is Endorsed as Dated the 10th. of April, 1687. And delivered to my Lord President by Dr. *Thomas Smith* and Captain *Bagshaw*.

I find among the other papers delivered me from the Register, one from Dr. *Thomas Smith*, read and published at a Meeting of the Fellows at his Return from presenting the foresaid Petition: In these words,

Gentlemen,

Gentlemen,

IT is my opinion (for I will not pretend to call it by any other Name, much less by that of advice) leaving every one here present to the liberty of his own judgment, that his Majesty not having thought fit, upon our late Application to him, to Revoke his Royal Mandate, nor as we pray in the close of the Petition, to leave us to our own choice, according to the direction of our Founders Statutes, nor to recommend such a person as may be more serviceable to his Majesty and to the College: We most humbly Petition the King again, and represent the several respects referred to in our Petition, which render Mr. *Farmer* incapable of being Elected, and admitted President of the College. This Method and procedure being most prudent, and dutiful, and fit to be entered upon immediately. The King having interposed his Royal pleasure and Authority; which if it had not been done, I readily acknowledge, that we not only might but ought to proceed to the Election of a President in that very Instant, according to the express Letter of the Statute in every particular. But for this, let every one concerned be his own Casuist. These are my private Thoughts, and upon mature deliberation: I conceive that I should be very defective in my Duty to the King, and my Respect to you (whatever Mis-interpretation some possibly may frame of it.) If I had not made you acquainted with them at this meeting.

St. Mary Magdalen
College, April the
14th. 1687.

Tho. Smith, D. D.

I In-

§. 6. I Insert this, for the honor of this Gentleman who is known by his Learned Writings, which give account of his Travels to the Port and through part of Greece, and in defence of the Doctrine of the Church of England: As also to let all know how happy it had been if the Fellows had hearkned to his honest, sober and faithful advice, which was assented to by Dr. Aldworth, Dr. Fairfax and Dr. Pudsey at their private Conference before proceeding to Election, tho' they after changed their minds.

It hath been the practice in former times, and according to the Canon Laws, that when any Superior enjoined any matter upon Inferiors which they judged to be prejudicial to their Rights: It was their Duty *rescribere*, to Write to the Prince, or other Superior to shew him wherein, by such Mandate their Rights were invaded, or what other inconveniences might ensue, and not to proceed forthwith to do that which was forbid; especially not to proceed to Election as here they did when the King had after their Petition presented to him, expressed himself, that he would be obeyed. In Duty and Obedience therefore they should have stayed their Election, and represented their Case more particularly, and it is most certain, that the neglect of this and the contempt of the Kings Authority were the Original causes of all that hath befallen them, but I shall leave this and proceed in the matters of Fact.

Whitehall April the 16th. 1687.

My Lord,

§. 7.
My Lord President to the
Bishop of
Winchester.

I Have received your Lordships Letter of the 8th. Instant, with an Address or Petition inclosed in it from St. Mary Magdalen College in Oxford, which

I laid before the King, who had before granted his Mandate in behalf of Mr. Farmer to be Elected and Admitted President of that College, and being since informed, that notwithstanding the same, they have made Choice of Mr. Hough; His Majesty Commands me to acquaint your Lordship, that his pleasure is you should not Admit Mr. Hough to be President till further Order from him.

I am
 Lord Bishop of
 Winchester.
 MY LORD,
 Your Lordships most
 humble Servant.

Sunderland P.

This being sent to the Bishop, he returned this following Answer the next Day.

My Honorable Lord,

THIS Morning I received yours of the 16th. (by the hands of Mr. Smith one of His Majesties Messengers) In which your Lordship signifies to me His Majesties pleasure not to Admit Mr. Hough to be President of St. Mary Magdalen College Oxon, until further Order from him.

Bishop of
 Winchester
 Answer.

But Mr. Hough being Yesterday Morning presented to me by some of the Fellows of the College, as Statutably Elected, I did according to the Trust reposed in me by the Founder, after he had taken the Oath enjoyned by the Statute, Admit him President, and am certain when the Statutes of the College are laid before His Majesty he will find, that I have not violated my Duty; in performance of which

I never was, nor ever shall be remiss, as I desire you to assure him from.

Farnham Castle Your most humble Servant.

April the 17th.

1687. P. Winchester.

§. 8.
By the Statutes there are five days allowed for the Bilhop of Winchester's confirmation.

By this it appears how sedulous the new Elected President and the Fellows were, to have the Election confirmed; presuming, that this being done, the President would have a Legal Right, and could not be removed but by course of Common Law: But I hope to shew hereafter, that the practice of the Kings of England, and of the Visitors appointed either by the Kings or the Popes (the latter of whose power our present Laws give his Majesty) hath been to dispense with Statutes, and to place, and displace for disobedience, Heads of Colleges and Fellows by the signification of their Royal pleasure, or to Impower Visitors by Commission to do the same; and of this it cannot be conceived, that the Members of the College could be Ignorant; but that they rather were animated to lay hold of this opportunity, to see if they could dispute the Kings Authority, or which is of equal concern to many, render the King's Actions disobliging, whereby they might gain the point of raising jealousy, and male-contentedness in peoples minds, with which designs I will not charge all the Members of the Society; But it is too apparent, that those who underhand encouraged them to persist in their opposition, designed some such matter.

I now pass to their Application to his Grace the Duke of Ormond their Chancellor. and their Representing their Case in the best dress they could; and shall

shall only note at present, that these were like to have little effect, since they were the justifying of their actions upon such slender grounds, as in the sequel will be made appear, and carried no tokens of relenting or repentance for their by-past disobedience, so that the King could not look upon them, as any Acts of theirs that might induce him to a Clemency or Pardon, where they would not own their failor of duty, but were a denial of his Sovereign and Supreme Authority of dispensing and being obeyed; contrary to the known Laws and practice of his Royal Predecessors, as I shall make clear when I come to Answer their Objections, and shew the obligation to their Oaths of owning the Kings Supremacy and the Sovereign Jurisdiction the King hath to alter and make null their Statutes that any ways Impugn his Prerogative over such Societies, and Corporations; which owe their Foundation, and subsistence to the Royal pleasure, and may be proceeded against, when the King pleaseth, by a more sever method of *Quo Warranto*; whereby they may be totally suppressed: Whereas the King in great Clemency proceeded only by way of Visitation, which is a most undoubted Prerogative of the King, that must ever be owned by those who question the extent of the Ecclesiastical Commission.

I now proceed to the Address the Society made to his Grace the Duke of Ormond as followeth,

May it please your Grace.

VE the President and Fellows of *St. Mary Magdalens College in Oxford*, sensible of the Honor and Benefit we enjoy under your Graces Patronage, and how much it imports us to have re-

§. 9.

The President and Fellows of *St. Mary Magdalens College Oxon* to the Duke of Ormond, then Chancellor.

course to your Advice in all those difficulties where-
with we are prest; having, as we fear, displeased
His Majesty in our late Election of a President, do
humbly beg leave to represent to your Grace a true
State of our Case, and hope you will please to In-
form the King how incapable we were of obeying
his Commands.

His Majesty was pleased, upon the Death of Dr.
Henry Clark President of this College, to Command
us by his Letter, to Elect, and Admit Mr. *Anthony
Farmer* into that Office, a person utterly incapable
of it by our Statutes, as we are ready to make appear
in many particulars: And since we have all taken a
positive Oath of obedience to them, and that Exclu-
sive of all Dispensations whatsoever; We humbly
conceive we could not obey that Command in favor
of Mr. *Farmer*, unless he had brought those Quali-
fications with him which our Founder requires in
the person of the President. And being confined
as to the time of our Election, we have been forced
to proceed to the Choice of one who has approved
his Loyalty in the whole course of his Life, and
whom we think Statutably qualified for the place.

May it therefore please your Grace to Interpose
with his Most Sacred Majesty in our behalfs, that
we may not lie under the weight of his displea-
sure for not being in a capacity of obeying his Com-
mand. We know him to be a Prince of Eminent
Justice, and Integrity, and therefore cannot think he
would value any Instance of Duty to himself, which
manifestly breaks in upon the obligation of our Con-
sciences; And your Graces extraordinary unblemisht
Loyalty to the Crown, and that regard which we as-
sure our selves, our most Honored Lord and Chan-
cellor

cellor has to the peace and well-fare of this place, induces us to presume your Grace will omit no endeavors to set before his Majesties Eyes the true reason and necessity of our proceedings.

That God Almighty will protect your Grace shall be the daily prayers of,

From St. Mary Magdalen College in
Oxford April the
19th. 1687.

*May it please your Grace,
Your Graces most obedient
Servants.*

J. Hough, President.

Ch. Aldworth, Vice-President.

Hen. Fairfax, D. D.

John Smith, D. D.

Thomas Smith, D. D.

Tho. Bayley, D. D.

Alex. Pudsey, S. T. D.

Tho. Stafford, L. L. D.

Rob. Almont, B. D.

Main. Hammond, B. D.

Rich. Strickland.

Edw. Maynard.

Hen. Dobson.

Jo. Davys.

Ja. Fayrer.

Jo. Harwar.

Geo. Fulham.

Tho. Bateman.

Jo. Gilman.

Steph. Wheelkes.

Tho. Goodwyn.

Edw. Terbury.

Rob. Holt.

Fran. Bagshaw.

Ja. Bayley.

Rob. Hyde.

While the College was making this application, the King thought fit to require an account of their actions; therefore ordered my Lord President to write as followeth.

Whitehall

*Whitehall April the 21st. 1687.**Gentlemen,*

§. 10.
My Lord Sun-
derlands Let-
ter to the
Vice Presi-
dent and Fel-
lows of St.
Mary Magda-
lens College
in the Univer-
sity of Oxford.

THe King being given to understand, that notwithstanding his late Mandate, sent to you for Electing Mr. *Farmer* to be President of that College, you have made choice of another Person; His Majesty Commands me to tell you, he is much surprised at those proceedings, and expects you should send me an Account of what past upon that occasion, and whether you did not receive His Majesties said Letters Mandatory before you chose Mr. *Hough*.

*I am**Gentlemen,**Your Affectionate and
humble Servant.**Sunderland P.*

The Answer returned to this Letter was as followeth.

May it please your Lordship,

§. 11.
The Answer.

YOur Lordships of the 21st. were received, signifying to us His Majesties pleasure, that we should give your Lordship an Account of what passed at our late Election of a President, and of the Receipt of His Majesties Letters Mandatory, in behalf of Mr. *Anthony Farmer*. In all Dutiful obedience to His Majesty we have accordingly sent to your Lordship, a plain State of the Case wherein nothing in this World could so much affect us as that

that we could not Elect the said Mr. *Farmer* President, in compliance with His Most Sacred Majesties Letters, being a person in our Judgments utterly incapable of that Office. We beg leave to represent to your Lordship, that our Princes displeasure would be the greatest misfortune that could befall us; and our only support under this apprehension is, that a Loyal Society can never suffer, in the hands of so Generous and Gracious a Prince, for what they have done out of a Consciencious discharge of the Trust reposed in them by their Founder.

That God Almighty would Crown all your Lordships endeavors with success: and preserve your Lordship in the Grace and Favor of the best of Princes, shall be the Daily Prayer of,

*May it please your Lordship,
Your Lordships most humble and
most obedient Servants.*

The Vice-President and Fellows
of *St. Mary Magdalens College*
in *Oxford*.

The Case of the Vice-President and Fellows of St. Mary Magdalen College, in Oxford, in their late Election of a President.

Upon the first Notice of the Death of Dr. *Clark*, Late President of *St. Mary Magdalen College* in *Oxford*; the Vice-President called a Meeting of the Fellows, in order to appoint a day for Election of a new President. And the 13th. day of *April* was the time prefix'd; with power to prorogue the Election

§. 12.

as

as they should see cause till the 15th. beyond which time it was not in their Power to defer the same. This being agreed, a Citation or Præmonition was fixt upon the Chappel-door of the College, signifying the same, and summoning all the absent Fellows to repair home to the ensuing Election, as the Statute in that case directs. After this, upon the 8th. of *April* they received His Majesties Letter in behalf of Mr. *Farmer*, requiring them to Elect and Admit him President: But he having never been Fellow of that College, or of *New-College* in *Oxford*, (which are the only Persons capable of being chosen by the Statutes) and wanting likewise such personal Qualifications as are requir'd in the Character of a President, they did not imagin it was, or could be His Majesties pleasure, that they should act so directly against the express words of their Statutes, to which they are strictly and positively Sworn. But did humbly conceive they were bound in Duty to believe, His Majesty had been mis-informed in the Character, and Capacity of Mr. *Farmer*, and therefore upon the 15th. of *April* (the last of those days within which they are confined to finish the Election) they proceeded to a choice, and having first Received the Blessed Eucharist, and taken an Oath, as the Founder enjoyns, to choose a person so qualified as is there specified, they did Elect the Reverend Mr. *Jo. Hough*, Batchellor in Divinity, who is a Person every way qualified by the Statutes of the said College: And if it shall be objected that His Majesty did in His Letter for Mr. *Farmer*, Graciously dispense with all those Statutes that rendered him incapable of being Elected, and that therefore they might have obeyed without breach of their Oath.

They

They humbly beg leave to Represent, that there is an exprefs Clause in that Oath, which every Man takes when he is admitted Fellow of the College, wherein he Swears, neither to procure, accept, or make use of any Dispensation from his Oath, or any part thereof by whomsoever procured or by what Authority soever granted.

As to their former practice, when they have Elected in obedience to the Kings Letters heretofore, it has been always in such Cases where the persons recommended have been every way qualified for this Office by their Statutes, in which cases they always have been and ever will be ready to comply with His Majesties pleasure, it not being without unspeakable regret that they disobey the least of His Commands. They know how entirely their welfare depends upon the countenance, and favor of their Prince, neither can any thing more deeply affect and grieve their Souls, than when they find themselves reduced to this unfortunate necessity of either disobeying his Will, or violating their Consciences by a notorious perjury.

Some Clauses of particular Statutes to which the foregoing Case Relates.

IN the Statute concerning the Election of a President, his Character is thus described, That he must be a Man of good Reputation, and good Life, of approved understanding, good manners, and temper, and discreet, provident, and circumspect both in Spiritual, and Temporal Affairs. §. 13.

In the same Statute, the Oath which every Fellow

is obliged to take before he can give his voice in the Nomination of a President is this.

That he will name one or two of the Fellows of *St. Mary Magdalen College*, or of those who have formerly been Fellows there, and have left the place upon a Legal, and creditable account : Or that he will name one or two of the Fellows of *St. Mary Winchester College*, commonly called *New-College* in *Oxford*, or of those who have formerly been Fellows there, and have left the place upon a creditable account : After this the Thirteen Senior Fellows Swear, that of the two that are nominated, they will with all speed Elect one to exercise the Office of President whom in their Consciences they think most proper, and sufficient, most discreet, most useful, and best qualified for it, without any regard to love, hatred, favor, or fear, &c. As in the forementioned Statute is more largely exprest.

Part of that Oath which all Persons take when they are admitted actual Fellows; runs thus;

I*Tem*, I do Swear, that I will not procure any Dispensation contrary to my foresaid Oaths, or to any part thereof, nor contrary to the Statutes and Ordinances to which they relate, or any of them, nor will I endeavor that such Dispensation should be procured by any other, or others publicly, or privately, directly or indirectly ; And if it shall happen that any Dispensation of this sort shall be procured, or freely granted or obtained, of what Authority soever it be : Whether in General or particular or under what Form of words soever it shall be granted

ted; I will neither make use of it nor in any sort consent thereunto, So help me God.

Endorsed on the back of this, April the 24th. 1687.

The Case within Stated was then Publicly Read by the Vice-President of St. Mary Magdalen College in Oxford, at a Meeting of the Fellows and Generally approved of in the Presence of me,

James Almont, Public Notary.

May it please your Most Excellent Majesty.

WE your Majesties most humble and most dutiful Subjects the Fellows of St. Mary Magdalen College in Oxford, being deeply afflicted with the late sence of your Majesties heavy displeasure, grounded, as we in all reason humbly presume, upon the most unkind mis-representation of our actions in relation to the Election of a President into your Majesties said College; do humbly beg leave to prostrate our selves at your Royal feet, offering all real Testimonies of Duty and Loyalty. And as we have never failed to evince both our principles and practices to be truly Loyal, in obedience to the Commands of your Royal Brother and your Sacred Self, in matters of the like Nature; So whatsoever way your Majesty shall be pleased to try our readiness to obey your Royal pleasure (in any instances that does not interfere with, and violate our Consciences, which your Majesty is Studious to preserve) we shall most gladly and effectually comply therewith. A stubborn and groundless resistance

§. 14.
The Address
of the Fellows
of St. Mary
Magdalens
College to his
Majesty, sent
to my Lord
President to
be delivered
to the King.

The Kings Visitation Chap. 1. §. 2.

of your Royal Will and Pleasure in the present, and all other Cases, being that which our Souls eternally abhor, as becomes

Your Majesties most Dutiful and Obedient Subjects.

*Alex. Pudsey, D. D.
Tho. Stafford, L. L. D.
Jo. Rogers, B. D.
Main. Hammond, B. D.
Rob. Almont, B. D.
Ja. Bayley, M. A.
Rich. Strickland, B. D.
Hen. Dobson, M. A.
Ja. Fayer, A. M.
Jo. Harwar, A. M.
Geo. Hunt, A. M.
W. Cradock, M. A.*

*Jo. Gilman, M. A.
Ch. Penyston, M. A.
Hen. Holden, M. A.
John Smith, D. D.
Tho. Bateman, M. A.
John Davys, M. A.
Edw. Terbury, M. A.
Rob. Thornton, M. A.
Rob. Hyde, M. A.
Robert Holt, M. A.
Stephen Weelks, M. A.
Franc. Bagshaw, M. A.*

S E C T. II.

The Proceedings before the Lords Commissioners for Ecclesiastical Affairs.

§. 12

HAVING thus far related what was Transacted betwixt His Majesty and the forementioned Lords, and the Vice-President and Fellows of *St. Mary Magdalen* College, His Majesty thinking it expedient, that they should be called to an account for their disobedience, ordered the Lords Commissioners for Ecclesiastical Causes to proceed against them.

Pro-

Proceedings of St. Mary Magdalen College in Oxford.

Extracted out of the Register-Book, from the 28th. of May, to the 5th. of August. May 28. 1687.

By His Majesties Commissioners for Ecclesiastical Causes, and for the Visitation of the Universities, and of all, and every Cathedral and Collegiate Churches, Colleges, Grammar-School's, Hospitals and other the like Incorporations or Foundations and Societies.

Complaint having been made unto Us, that the Vice-President and Fellows of St. Mary Magdalen College in the University of Oxford, have refused to comply with His Majesties Letters Mandatory for Electing and Admitting Mr. *Anthony Farmer* President of the said College; in the room of Dr. *Clark* Deceased, and that notwithstanding His Majesties said Letters, they have Elected Mr. *John Hoag* President of the said College: You and either of you are hereby required to Cite and Summon the said Vice-President and Fellows, requiring them, or such of the said Fellows as they shall Depute in their behalf, to appear before Us in the Council Chamber at *Whitehall* upon *Munday* the Sixth of the next Month of *June* at Four in the Afternoon, to Answer to such matters as shall be objected against them concerning the premisses. And of the due execution hereof you are to certifie to Us then and there. Given under our Seal the 28th. of May. 1687.

To Thomas Atterbury, and Robert Eldows,
Or either of them.

Upon

§. 2.
Ex Registro.

Upon *June* the 6th. the Vice-President and Deputies of the Fellows appear, and do desire time which is allowed till this day Sennight.

The Answer
of the Vice-
President and
Deputed Fel-
lows, &c.

June the 13th. they attend with their Answer, which being Read, the Lords took time till the 22^d. Instant, for the further consideration of the matter.

The Answer of the Vice-President and other Fellows of St. Mary Magdalen College in Oxon, whose Names are herunto subscribed (being Deputed by the rest of the Fellows of the said College) to the Question proposed by the Right Honorable, and Right Reverend the Lords Commissioners for Ecclesiastical Causes, &c.

Why they did not obey His Majesties Letters, requiring them to Elect and Admit Mr. *Anthony Farmer* President of the said College.

THe said Vice-President and other deputed Fellows answer and say, That the said College of *St. Mary Magdalen* in *Oxon* is a Body Corporate, governed by Local Statutes, granted and confirmed to them by His Majesties Royal Predecessor, King *Henry* the 6th. for him his Heirs and Successors under the Great Seal of *England*, which are also since confirmed by several other Letters Patents of others His Majesties Royal Predecessors under the Great Seal of *England*.

That by the Statutes of the said College (to the observation of which, each Fellow is Sworn) it is ordered that the person to be Elected President thereof, shall be a Man of good Life, and Reputation, of
ap

approved Understanding, and of good Manners and Temper, and Discreet, Provident and Circumspect, both in Spiritual and Temporal Affairs. And at the time of the Election of a President, the said Fellows are bound by the said Statutes to take an Oath, that they shall nominate none to that Office, but such as are or have been Fellows of the said College, or of *New-College in Oxford*, and if they are not actually Fellows at the time of Election, that they be such as have left their Fellowships, in those respective Colleges, upon creditable accounts. And when two qualified persons shall be nominated at the time of Election, by the greater number of all the Fellows to the said Office of President; The thirteen Seniors also swear that they will Elect one of them, whom in their Consciences they think most proper, and sufficient, most discreet, most useful and best qualified for that place, without any regard to love, hatred, favor or fear, and every Fellow when he is first admitted to his Fellowship in the said College, Swears that he will inviolably keep and observe all the Statutes, and Ordinances of the College, and all and every thing therein contained, so far, as does, or may concern him, according to the plain, literal, and grammatical sense and meaning thereof, and as much as in him lies will cause the same to be kept and observed by others: And that he will not procure any Dispensation contrary to his aforesaid Oaths, in any part thereof, nor contrary to the Statutes and Ordinances to which they relate, or any one of them, nor will he endeavor that such Dispensation shall be procured by any other, or others publicly, or privately, directly or indirectly, and if it shall happen that any Dispensation of this sort shall be procured, granted,

ted, or obtained of what Authority soever it be, whether in general or particular, or under what Form of words whatsoever, it shall be granted, that he will neither make use of it nor in any sort consent thereunto; all which several Oaths follow in-express words at the End of this their Answer.

That upon notice of the Death of *Dr. Clark*, late President of the said College, the Vice-President called a Meeting of the said Fellows in order to appoint a day for Election of a new President and the 13th. day of *April* last, was the time prefixt, with power to prorogue the same as they should see cause until the 15th. day of the same Month, beyond which time they could not Statutably defer their Election, and in pursuance thereof a Citation or Præmonition was fixed upon the Chappel-door of the said College, signifying the same, and by which the absent Fellows are summoned to repair home to the said Election, as the Statute in that case requires.

And the said Vice-President and other deputed Fellows further say, that upon the 11th. day of the said Month of *April* they received His Majesties Letters requiring them to Elect and Admit the said Mr. *Anthony Farmer* to be President of the said College. But forasmuch as the said Vice-President and the other Fellows apprehended the Right of Election to be in themselves, and did believe His Majesty never intended to dispossess them of their Rights; And forasmuch as the said Mr. *Farmer* had never been Fellow, either of *Magdalen* College, or of *New*. College in *Oxford*, and had not those qualifications which in and by the Statutes of the said College are required in the Character of a President, as they in their Consciences did and do verily believe, and in regard they could

could not comply with His Majesties Letters, without the violation of their Oaths, and hazard of that Legal Interest and property, whereof they are by the said Statutes possess'd, and which by their Oaths they are bound to maintain. They represented the same by their Humble Petition to His Majesty, and having deferred their Election of a President to the last day limited by their Statutes, they then proceeded to Election. And having first Received the Blessed Eucharist, and taken the said Oaths, as the Statutes require, to choose a person so qualified as is before express'd, they did Elect the Reverend Mr. *John Hough* Batchellor in Divinity, and one of the Fellows of the said College, a person every way qualified to be their President, who has been since Confirmed by the Lord Bishop of *Winchester* their Visitor, as the Statutes of the said College direct.

And that they might not lie under His Majesties displeasure by their proceedings, on the 19th day of the said Month of *April* they made humble Representation thereof to His Majesty, by his Grace the Duke of *Ormond*, Chancellor of the University of *Oxford*, setting forth their indispensable obligation to observe their Founders Statutes.

All which matters the said Vice-President, and other deputed Fellows, do humbly offer to your Lordships consideration, and pray to be dismissed with your Lordships favor.

Charles Aldworth, Vice-President.

John Smith, D. D.

Mainwaring Hammond, B. D.

Henry Dobson, Dean of Artes.

Ja. Fayrer, A. M.

E

To

§. 3.

To this were subjoyned the following Statutes for regulating the Election of a President.

De numero Scholarium & Electione Præsidentis.

The College
to consist of
one President
and 40 poor
and indigent
Scholars
Clerks.

And 30 poor
Schollars cal-
led Demys.

And 4 Pres-
byters Chap-
lains, 8 Clerks
and 16 Cho-
risters.

Two or 3 of
the 40 to be
Students of
the Canon
and Civil
Laws, and as
many in Phy-
sic.

The Charac-
ter of the Pre-
sident.

IN primis siquidem ut Sacra Scriptura, seu pagina scientiarum omnium aliarum Mater & Domina, sua liberius dilatet tentoria, & cum ea utraque militet Philosophia, præfatum nostrum Collegium *Oxonie*, in & de numero unius *Præsidentis* & *Quadrageinta pauperum*, & indigentium Scholarium Clericorum, in dictis scientiis studere debentium, subsistere, Statuimus & etiam Ordinamus; & sic ipsum volumus Deo propitio perpetuo permanere. Præter quem numerum sint alii Triginta pauperes Scholares, vulgariter vocati *Demys*, Grammaticalia, Logicalia, vel Sophisticalia diligenter addiscentes; & ut cultus Dei, a quo bona cuncta procedunt, amplius augeatur, & melius sustentetur, Volumus quod præter dictos numeros Scholarium sint etiam quatuor Presbyteri Capellani, octo Clerici, Sexdecim Choristæ Cappellæ dicti Collegii in Divinis servitiis deservientes: *Provisio* quod de dicto numero quadragenario, ex speciali providentia Præsidentis, Vice-Præsidentis, Decanorum, & trium aliorum Seniorum, duo vel tres in jure Canonico & Civili, alii vero duo vel tres in Medicinis, quos ad hoc Ipsi aptos, habiles, & idoneos decreverint, studere poterint.

Præsidentis vero omnibus Scholaribus, Sociis, Clericis, Ministris, & quibuscunque aliis existentibus & degentibus in eodem præsit, & *Præsidentis* perpetuo nuncupetur: Vir bonæ conversationis & honestæ, scientiâ, bonis moribus, & conditionibus approbatus, in Spiritualibus & temporalibus discretus, providus ac etiam

etiam circumspectus, cujus Nominationem Electionem & Praefectionem, perpetuis futuris temporibus Statuimus, Ordinamus & volumus debere fieri sub hac formâ viz. Quod cedente decedente vel etiam amoto Praefidente hujusmodi, vel alias dicto Collegio quoquo modo destituto Praefidente, infra duos dies immediate sequentes destitutionem hujusmodi, omnes & singuli socii nostri Collegii praedicti in Universitate praesentes, per Vice-Praefidentem, si praesens fuerit, vel eo absente, vel alias impedito, per socium simpliciter seniore ipsius nostri Collegii praemoniti simul conveniant in Capella dicti nostri Collegii, de die Nominationis Praefidentis futuri fiendo (ut convenit) tractaturi, Quam Nominationis diem quam citius fieri poterit, infra quindecim dies, ex tunc immediate sequentes continue numerandos, pro Nominatione hujusmodi facienda, Vice-Praefidens, vel dictus socius statuatur, & praefigat per literas citatorias, & monitorias in valvis Capellæ dicti Collegii nostri figendas; Provisio tamen quod socios suos absentes per duodecim dies a tempore praemonitionis in hoc casu fienda priusquam ad futuri Praefidentis Nominationem procedant teneantur & debeant expectare. Quibus duodecim diebus hujusmodi transactis, in crastino convocentur per Vice-Praefidentem, vel ipso absente per socium seniore ad Capellam praedictam omnes & singuli Collegii nostri socii praesentes cujus quidam Vice-Praefidentis seu ipso absente socii hujusmodi seniores vacatione, omnes & singulos socios ante dictos parere volumus, sub pena perpetuae amotionis a Collegio nostro memorato, quam non parentes incurrere volumus ipso facto; quam etiam penam omnes & singulos socios in Nominationibus & Electionibus quorumcunque Officiariorum interesse habentes, & effectualiter no-

The Form of the choosing the President:

Upon the death or removal of the President, the Vice-President or in his absence the Senior Fellow within two days shall convene the present Fellows to consider of the day for Election, which shall be within 15 days after, so that the absent Fellows may have notice by Citation.

Upon the 13th day all the Present Fellows to appear under pain of Expulsion.

The like penalty upon Election of other Officers.

He that convenes the Fellows to declare the cause of the meeting. Then the Mass of the Holy Ghost to be celebrated.

Then, this Statute to be read publicly so to proceed to Election not staying for the absent Fellows: The two Senior Fellows to be Scrutators or Tryers, who with all the other Fellows shall take an

The Oath. To nominate one or two of the Fellows of this College or have been Fellows of that College and have removed thence for lawful and honest causes, or of St. Mary of Winchester College in Oxford, or such as have been Fellows as before.

minare seu eligere reñuentes incurrere volumus ipso facto. Exposita vero per eundem convocantem causa Convocationis predictæ, scilicet pro Nominatione futuri Præsidentis faciendæ, pro Spiritus Sancti gratia in hac parte uberius impetranda, antequam ad Nominationem procedant Missam de eodem Spiritu Sancto faciant inter se solenniter celebrari, quæ celebrata statim legatur hoc præsens Statutum plenè & perfecte per Vice-Præsidentem, vel ipso absente per socium seniore, palam & publicè deinde ad Nominationem futuri Præsidentis expectatorum, ut præmittitur, absentia non obstante, in forma infra scripta ulterius procedatur. Duo socii nostri Collegii omnibus aliis sociis seniores, quos Scrutatores in ista Nominatione esse volumus, ac omnes alii socii supra dicti, tactis per ipsos & ipsorum quemlibet sacrosanctis Dei Evangelii, coram Vice-Præsidente predicto, vel ipso impedito, seniori socio præsentem, corporale præstent juramentum, publicè tunc ibidem.

Quod postpositis omnimodis, amore, favore, odio, timore, invidia, partialitate, affectione consanguinitatis, affinitatis, facultatis & scientiæ nec non acceptione personarum & patriæ, & occasione quacunque precis, aut pretii, cum omni celeritate qua poterint, Nominabunt unum vel duos de sociis ipsius Collegii, aut de illis qui aliquando fuerint ipsius Collegii socii, & ex causis licitis & honestis inde recesserint; vel nominabunt unum, vel duos de sociis nostri Collegii Beatæ Mariæ Winton in Oxon, vel de his qui quondam fuerint socii ipsius nostri Collegii, & ex causis recesserint honestis. Ita vero quod Nominent duos ex his predictis Collegiis, vel ex altero

altero Eorundem in Theologiâ, Jure Canonico, Civili, aut in Medicina Doctores, vel artium Magistrorum quos in ipsorum Conscientiis magis idoneos, sufficientiores, discretiores, utiliores, & aptiores ad subeundum, gerendum, & exercendum Præsidentis Officium speraverint, & firmiter crediderint; nec non quod illos quos Nominaverint sperant, & firmiter credunt, quoad bonum & salubre regimen & diligentem curam ipsius Collegii, personarum, Statutorum, & bonorum ejusdem Collegii, Terrarum, Possessionum, & Reddituum, Spiritualium & Temporalium, & jurium eorundem Conservationem, plus posse proficere & debere. Jurabunt insuper dicti Scrutatores, ante ipsum Scrutinium, quod vorum cujuslibet sociorum prædictorum, in ipsa Nominatione diligenter & fideliter examinabunt, qui ut præmittitur examinati, coram dictis Scrutatoribus, sua vota secrete, & sigillatim emittere, & ea propria manu in scriptis redigere teneantur ac debeant: ad quod etiam dictos Scrutatores per duos proxime seniores (modo quo præfertur) examinatos, arctari volumus & Ordinamus. In quo quidem Scrutinio si contingat duas personas vota majoris partis omnium sociorum tunc præsentium habere, senior dictorum Scrutatorum, dicto Scrutinio inter se Communicato, & fideliter calculato, ipsum Scrutinium mox de hujusmodi Nominatis personis publicet in communi; qua publicatione facta, illæ personæ pro Nominatis habeantur.

Si vero in dicto Scrutinio in duas personas consensum non fuerit (ut præfertur) absque omni tumultu & contradictione, iterum consimile fiat Scrutinium, & sic deinceps per tres dies continuos, quod si in tertio die non concordatum fuerit, illi duo: pro Nominatis habeantur.

The persons named, to be Drs. of Divinity, Canon or Civil Law, or in Physic or Masters of Arts.

The Character of those so to be nominated.

The Oath of the Tryers before the scrutiny to examine the vote of every Fellow, who shall give their votes severally in secret and in writing.

The Oath to be tendered by the next immediate senior.

If the votes fall upon two, the eldest.

Tryer having exactly computed, it shall be published.

If the votes be for more than two, the scrutiny shall be repeated and so to continue for three days.

if not determined before upon the third day those shall be reputed the two Elects who have the greater number of votes.

If no two have the Majority of votes those shall be the two Elects who have the greatest number of the senior Fellows, which shall be published by the senior Tryer. After this publication the Vice-President or senior Fellow shall convene 13 of the senior Fellows to make the final Election of the President.

These 13 senior Fellows shall take an Oath as formerly.

If the Vice-President be one of the senior Fellows then the Oath shall be administered to him by another senior Fellow.

habeantur, qui Scrutinio inter dictos Scrutatores communicato plures sociorum nostri Collegii voces partium comparatione, numero habere inveniuntur: Si vero nulli duo plures voces simpliciter, sed multi æquales voces numero habuerint, illi pro Nominatis habeantur, qui de habentibus æquales voces numero fuerint seniores, quod per seniore[m] ipsorum Scrutatorum in Communi publicetur. Qua publicatione facta Statuimus & volumus Vice-Præsidentem, vel ipso absente, socium simpliciter seniore[m] præsentem, Convocare tresdecim socios seniores Collegii, ad efficacem & finalem Electionem unius de personis Nominatis in Præsidentem assumendi, & præficiendi. Quibus convenientibus jurabunt omnes & singuli tresdecim seniores prædicti, quod, postpositis omnimodis amore, favore, odio, timore, acceptione personarum, & patriæ, ac partialitate facultatis & scientiæ, ac occasione quacunque precis, aut pretii, cum omni celeritate unum de prædictis Nominatis, quem in ipsorum conscientiis magis idoneum, sufficientiorem, discretiorem, utiliorem, & apriorem crediderint, ad exercendum Præsidentis Officium eligent; Vice Præsidente nostri Collegii, vel ipso absente socio seniori, dictos tresdecim & quemlibet eorum cum dicto juramento onerante: Quod si Vice-præsidentis de illis tresdecim senioribus unus existat, per alterum seniore[m], simili juramento oneretur. Quo facto Scrutatores in prima Nominatione, Scrutinium de votis prædictorum tresdecim seniorum Præsidentem eligere debentium facere teneantur, in quo Scrutinio, socii Præsidentem eligere debentes, vota sua pure simpliciter & secrete manibus propriis scribere teneantur, ipsis Scrutatoribus videntibus, & auscultantibus: Et prædicti Scrutatores juramento simili

simili præstito, sua vota scribant coram duobus senioribus post eos proximis, pure, simpliciter, & secrete, in quo quidem Scrutinio, si contingat unam personam vota omnium prædictorum tredecim habere, Scrutatores prædicti, dicto Scrutinio inter se communicato, ipsum Scrutinium de hujusmodi electa persona, mox per seniore illorum publicent in Comuni: Qua publicatione sic factâ illa persona pro Electa habeatur in quam tresdecim socii prædicti consenserint.

The votes to be given to the Tryers as before.
The Tryers being sworn likewise shall give their votes.
If one person have all the votes of the 13 the senior Tryer shall publish him President.

Si vero in dicto Scrutinio in unam personam per dictos tresdecim unanimiter consensum non fuerit; Nihilominus illa persona, pro Electa habeatur absque tumultu, contradictione, querela, appellatione, supplicatione, seu quocunque impedimento Juris, vel facti, in quam, per majorem partem prædictorum tresdecem consensum fuerit, & coram omnibus & singulis tunc ibidem præsentibus, celerius quo fieri poterit, pro Præsidente nostri Collegii per unum prædictorum Scrutatorum denunciatur; quibus omnibus sic peractis, nullo alio juris ordine, processu, seu solennitate in hac parte observatis, seu etiam requisitis, illa persona in Præsidentem, in Scrutinio finaliter nominata, citius quo commode fieri poterit, per unum seniore locum ipsius Collegii, per Majorem partem ipsorum tresdecim seniorum nominandum, una cum Literis Electionis prædictæ, formam ac præsentis nostri Statuti, & Nominati hujusmodi juramenti præstandi tenores plenarie continentibus, sigillo communi dicti Collegii sigillatis Domino Episcopo *Winton.* qui pro tempore

If the 13 Fellows votes agree not in one person he shall be President who hath the majority of the votes of the 13 senior Fellows.
He shall instantly be published President and without any further solemnity.
As soon as may be the Elested President by one of the senior Fellows Elested by the majority of the 13 Fellows together with Letters of his Election and conteining

the Statute
and the Oath
under the
common Seal
of the College
shall be pre-
sented to the

Bishop of *Winchester* for the time being, or in his absence to his Vicar general or the Guardian of the Spirituality in the vacancy and the Letters are to be believed by the Bishop or those in his place without proof.

The Fellow
sent with the
President
shall propose
the President
to the Bishop
or those in his
place, speci-
ally decently
and honorab-
ly commend-
ing the Presi-
dent and all
else of the
College.

The Bishop or
his Vicar, &c.
without delay
of time, any
Judicial Pro-
cess, or refusing
shall admit
him President.
If the Bishop
or his Vicar,
&c. for five
days to be
numbered from
the presenting
the President
shall refuse
to prefer the
person thus
proposed to
be President
then by ver-
tue of the

tempore fuerit, vel ipso in remotis extra Diocesin
suam agente, ipsius in Spiritualibus Vicario gene-
rali aut sede Episcopali vacante, Custodi Spiritua-
litate ejusdem presentetur.

Quibus literis super Electione, seu Nominatione
hujusmodi modoque & forma predictis, absque
probatione alia plenam fidem volumus adhiberi.
Qui quidem socius, cum dicta personam in Præsiden-
tem Nominata & Electa mittendus, coram Domino
Episcopo *Winton.* ipsius Collegii tunc Patrono, seu
illo cui dictam presentationem fieri tunc continget,
propositionem facere teneatur, dictum Collegium,
Personam in Præsidentem Nominatam, & omnes
alias personas dicti Collegii eidem specialiter, de-
center & honorifice commendando, ipse vero Epis-
copus dictus *Winton.* seu ipsius Vicarius aut Custos
Spiritualitatis, ejusdem cui dictam presentationem
fieri continget, personam sic Electam absque mora
dispendio, & sine processu judiciario, & absque im-
pugnatione Electionis sive Nominationis predictæ
dicti Collegii præficiat, extrajudicialiter in Præsi-
dentem. Si autem Dominus Episcopus *Winton.*
aliusve ex predictis personis ad quem dicti Præsi-
dentis presentationem spectare volumus, ut præfer-
tur, per quinque dies, a tempore Præsentationis
predictæ sibi factæ continue numerandos, noluerit
personam in forma prædicta Electam, præficere in
Præsidentem, ex tunc Electus hujusmodi, eo ipso
presentis nostri Statuti vigore, in Præsidentem dicti
nostri Collegii sit præfectus, & pro vero & legitimo

&

& perpetuo Præsidente inibi habeatur. Præsidentem vero hujusmodi quemcunque Statim post præfectionem suam (si hujusmodi præfectio tunc fiat) primo coram illo qui ipsum præfecerit in Præsidentem, & subsequenter in præsentia omnium sociorum ipsius Collegii præsentium, antequam quoquo modo administrat, tactis & inspectis per ipsum Sacrosanctis Evangeliiis subscriptum præstare volumus juramentum.

Statutes he shall be and be judged President without it. The President shall presently after such preferring to the Presidentship, first take the following Oath before

the Bishop or his Vicar, &c. and after before all the Fellows.

Juramentum admittendorum in veros Socios.

EGO N. Juro ad hæc Sancta Dei Evangelia per me Corporaliter tacta, quod omnia Statuta, & Ordinationes hujus Collegii edita, & edenda, per Reverendum in Christo Patrem *Gulielmum Waynsfleet* Fundatorem prædictum, ac omnia & singula in eisdem Contenta, quatenus personam meam concernunt, vel concernere poterint secundum planum, literalem, & Gramaticalem sensum & intellectum inviolabiliter tenebo, & etiam observabo, & quantum in me fuerit teneri faciam ab aliis, & etiam observari, &c. Item quod non impetrabo Dispensationem aliquam contra juramenta mea prædicta, vel aliquam particulam eorundem, nec contra Ordinationes, & Statuta de quibus præmittitur, aut ipsorum aliqua, nec dispensationem hujusmodi, per alium vel alios publice vel occulte impetrari vel fieri procurabo, directe, vel indirecte; & si forsitan aliquam dispensationem hujusmodi impetrari aut gratis concedi, aut acquiri contigerit cujuscunque fuerit Authoritatis seu si generaliter, seu specialiter,

The Oath of a President or Fellow.

W. F

aut

aut alias sub quacunque verborum forma concessa sit, ipsa non utar, nec eidem consentiam quovis modo, sicut Deus me adjuvet & hæc Sancta Dei Evangelia.

Carolus Aldworth, Vice-Præses.

Johannes Smith, S. T. P.

Mainwaringus Hammond, S. T. B.

Henricus Dobson, Artium Decanus.

Jacobus Fayer, Art. Mag.

At a Court held, &c. June the 13th. 1687.

§. 4.
Out of the
Register.

The Vice-President and Deputies of *St. Mary Magdalen* College in *Oxford*, attend with their Answer, which was Read and they being withdrawn, the Lords Commissioners thought fit to put of the further consideration of that matter, till the 22d. Instant at Ten in the Morning, at which time they were required to appear.

At a Court held, &c. the 22d. day of June. 1687.

The Vice-President and the Fellows of *St. Mary Magdalen* College attend, and are asked whether they had any thing else to offer by way of Answer. Upon which they gave in a Paper containing an account of several misdemeanors committed by *Mr. Anthony Farmer*, which being Read, the Lords Ordered *Mr. Farmer* should have a Coppy of the said Paper, and appointed to hear him upon it at the next meeting, requiring some of the Fellows of the said College to attend

tend at the same time, and as to the business of the said College their Lordships made this following Order.

By His Majesties Commissioners, &c.

VV Hereas it appears unto Us, that Mr. *John Hough* Bachelor in Divinity, has been unduly Elected President of *St. Mary Magdalen* College, in the University of *Oxford*; We have thought fit, upon mature consideration thereof, That the said Election be declared void, and that the said Mr. *John Hough* be amoved from the said Presidentship: And accordingly We do hereby declare, pronounce, and decree, That the said Election is void, and do amove the said Mr. *John Hough* from the place of President of the said College. Given under our Seal the 22^d. of *June*, 1687.

The Lords Commissioners pronounce the Election of Mr. *Hough* void.

At the same Court these two following Orders were made.

By His Majesties Commissioners, &c.

VV Hereas *Charles Aldworth*, Doctor of Laws, Vice-President of *St. Mary Magdalen* College in the University of *Oxford*, and the Deputies of the Fellows of the same, have been convened before Us, for their Contempt in not obeying His Majesties Letters Mandatory, for Electing and Admitting Mr. *Anthony Farmer* President of that College; And the said Dr. *Aldworth*, and Deputies having been heard thereupon, We have thought fit to declare pronounce, and decree, That the said Dr. *Charles Aldworth* shall for the said Contempt be suspended from being Vice-President of the said College,

§. 5.
The Sentence of Suspension against Dr. *Charles Aldworth*, and Dr. *Henry Fairfax*.

and also that *Henry Fairfax* Doctor of Divinity, one of the Fellows of the said College, shall for the said Contempt be suspended from his Fellowship, and accordingly We do hereby Suspend the said Dr. *Charles Aldworth* from being Vice-President of the said College, and the said Dr. *Henry Fairfax* from his Fellowship in the said College. Given under our Seal the 22d. day of *June*, 1687.

By His Majesties Commissioners, &c.

The Order of
the Lords
Commission-
ers for the
publication of
the former
decrees.

WHEREAS We have thought fit to declare, pronounce and decree, that the Election made by you of Mr. *John Hough* Batchellor in Divinity to be President of *St. Mary Magdalen* College in the University of *Oxford* is void, and to amove the said Mr. *John Hough* from the place of President of the said College. And whereas we have thought fit to Suspend Dr. *Charles Aldworth* from being Vice-President of the same, and D. *Henry Fairfax* from his Fellowship in the said College, We do hereby enjoin, and require you to cause our Orders vacating the said Election and suspending the said Dr. *Aldworth* and Dr. *Fairfax*, (Copies of which Order under our Seal are hereunto annexed) to be affixed on the Gates of the said College, to the end that due notice may be taken of the same. And you are to Certifie Us under your Hands and Seals of the due Execution of what is hereby required. Given under our Seal the 22d. day of *June*, 1687.

The Fellows
Answer was
not Read till
the 4th. of
August.

Supercribed.

*To the Fellows of St. Mary Magdalen
College in the University of Oxford.*

The

The Fellows studying all the ways they could to evade and refuse Obedience to the Kings Mandates, or the Lords Commissioners Orders did it colourably in this particular, as will appear in this following Letter.

MR. *Thomas Atterbury* Messenger, was sent with this Order to the College, and he returns Answer *June* the 24th. that he came thither that day, and enquired for Dr. *Pudsey* who he understood was Senior Fellow upon the place, and told him that he was directed by the Lords Commissioners to apply himself to him as Senior Fellow and desired him to Assemble the rest of the Fellows, that he might deliver to them the Orders from the said Lords; Dr. *Pudsey* reply'd, That he did not Act as Senior Fellow, for that he was made Burser, but would endeavor to get him an Answer at Five a Clock, as soon as Prayers were done, at which time he told him, that he had no power to Assemble the Fellows, neither could he any ways do it, so long as there was a President on the place the Fellows had no Authority to Act; There being two or three Fellows with this Doctor, one of them asked Mr. *Atterbury* to see the Orders, to which he Answered: If he with Dr. *Pudsey* and the rest would receive them he would deliver them to them, but would not Read them; So he shewed them the Indorfment, that they were directed to them, and offered to deliver them to them; But they refused, saying, they had no Authority to call an Assembly, neither could they do it, therefore it was not fit they should receive them, and being desired to tell him, if that was their final Answer, they said yes, so he told Dr.

§. 6.

Mr. *Atterbury's*
Letter concerning his
reception at
St. Mary Mag-
dalen College.

The Kings Visitatorial Chap. 1. §. 2.

Dr. *Pudsey* he must give a speedy Answer to the Register Mr. *Bridgman*, to whom he sends this account, and adds, that the Doctor treated him with very good words, and Invited him to Dine with them while he stayed in Town.

Thus far Mr. *Atterbury's* Letter, I now proceed to what was done next.

At a Court held, &c. the 1st. day of July 1687.

§. 7.
The Orders
of the Lords
concerning
Mr. *Farmer*,
upon the
Reading his
defence.
e Religio.

Mr. *Anthony Farmer* gave in his Answer to the Complaint exhibited against him by the Fellows of *Magdalen College*, which was Read, and the Court Ordered to hear the matter at their next meeting, when all parties concerned are required to Attend, and that *Compulsories* should be granted to both sides for Witnesses.

The Form whereof was as followeth.

By His Majesties Ecclesiastical Commissioners for Ecclesiastical Causes, &c.

YOu and either of you are hereby required forthwith to Cite and Summon *James Fayer* Master of Arts of *Magdalen College, &c.* to appear personally before us in the Council Chamber *Friday* the 29th. day of *July* Instant, at Four of the Clock in the Afternoon, then and there by vertue of this Citation, as Witnesses to give their Testimonies in the matter depending before us, betwixt the Fellows of *St. Mary Magdalens College in Oxford*, and one Mr. *Anthony Farmer*, under pain of the Law

Law and Contempt thereof. And of the due execution hereof you are to certifie us, the day and year aforesaid, together with these presents. Given under our Seal the 1st. day of July, 1687.

To Thomas Atterbury and Robert Eddows.
Or either of them.

July the 1st. Their Lordships having been informed, Out of the Register.
that their fonsaid Order of June the 22^d. had not
been obeyed, Ordered the following Citation.

By His Majesties Commissioners, &c.

W^Hereas We thought fit by our Order of the 22^d. of June last, to enjoyn and require the Fellows of St. Mary Magdalen College in the University of Oxford to cause our Orders for the vacating the Election made by them of Mr. John Hough to be President of the said College, and for Suspending Dr. Charles Aldworth from being Vice-President and Dr. Henry Fairfax from his Fellowship in the same, to be affixed on the Gates of the said College, and whereas we are given to understand that our said Order hath not been obeyed by the said Fellows: You and either of you are hereby required to Cite and Summon the said Fellows of St. Mary Magdalen College, requiring them to appear before Us in the Council Chamber at Whitehall, upon Friday the 29th. Instant, at Four in the Afternoon to Answer the said Contempt, and of the due execution hereof, you are to certifye

Citation of the Fellows for disobeying the former Order.

hie Us then and there. Given under our Seal the first day of July. 1687.

Superscribed.

To Thomas Atterbury and Robert Eddows.
Or either of them.

- §. 8. During this interim, before the Fellows appeared before the Lords Commissioners, the King, according to former Presidents, sends this following Inhibitory Mandate to the Fellows of *St. Mary Magdalen College*.

JAMES R.

Inhibitions
sent to the
Fellows nei-
ther to Elect
nor Admit
any Fellow or
Demy till the
Kings further
pleasure was
known, which
is according
to former Pre-
sidents as in
due place
will be shown.

TRusty and Well-beloved, We Greet you well, whereas We are informed, that a Sentence or Decree lately made by Our Commissioners for Ecclesiastical Affairs, touching an Election in that Our College hath not been obeyed, Our will and pleasure is, that no Election, or Admission be made of any person, or persons whatsoever, to any Fellowship, Demyship, or other place or Office in our said College, until We shall signifie Our further pleasure, any Statute, Custom, or Constitution, to the contrary notwithstanding; And so expecting your ready obedience herein, We bid you farewell. Given at our Court at *Windſor* the 18th. day of *July*. 1687. In the third Year of our Reign.

Superscribed.

To Our Trusty and Well-
beloved the Fellows of
St. Mary Magdalens
College in Our Univer-
sity of Oxford.

By His Majesties Command.

Sunderland P.

The

The next Court was held the 29th. day of July. At which time I do not find, that the Fellows of St. Mary Magdalen College did exhibit their Answer why they obeyed not the Order of the Lords Commissioners of the 22d. of June, nor that their Lordships required it, but I find in the Register this following Order to affix the Sentence on the College Gates.

§. 9.

By His Majesties Commissioners, &c.

Whereas We have thought fit to declare pronounce and decree, that the Election made of Mr. John Hough Batchellor in Divinity to be President of St. Mary Magdalen College in the University of Oxford is void, and to amove the said Mr. John Hough from the place of President of the said College. And whereas We have also thought fit to Suspend Dr. Charles Aldworth from being Vice-President of the same, and Dr. Henry Fairfax from his Fellowship in the said College; you and either of you are hereby required to cause our Orders, Vacating the said Election, and Suspending the said Dr. Aldworth and Dr. Fairfax (Copies of which under our Seal are herunto Annexed) to be affixed on the Gates of the said College to the end that due notice may be taken of the same, and of the due Execurion hereof you are to certifie unto Us at the next Court. Given under Our Seal the 29th. day of July. 1687.

Out of the
Regitter.
Order to Mr.
Atterbury, &c.
to affix the
Decree con-
cerning Mr.
Hough Dr.
Aldworth, and
Dr. Fairfax,
upon the Col-
lege Gates.

To Thomas Atterbury and Robert Eddows,

On either of them.

G

At

At the Court held, &c. the 29th. of July 1687.

§. 10.

Mr. *Anthony Farmer* was heard upon the complaint exhibited against him by *Magdalen College*.

I find nothing more relating to him entered in the Register, therefore since the Information against him and his defence are to be reckoned among the *Attentatar* as the Civilians Style them, and are no ways material to the discussing or clearing the Authority of His Majesty or the Lords Commissioners, I shall wholly omit any account of them, and proceed to what was done in the Court.

The Answer of the Fellows of St. Mary Magdalen College in Oxon, whose Names are herunto subscribed (being Deputed by the rest of the Fellows of the said College) made to the Citation of the Right Honorable the Lords Commissioners of Ecclesiastical Affairs, &c.

The Answer
of the Fellows
why they o-
beyed not the
order of the
22d. of June.

THE said Fellows, on the behalf of themselves and the rest by whom they are Deputed, do Answer that they humbly conceive, that the Order mentioned in the said Citation was not Legally served upon them, for that Dr. *Alexander Pufsey* only was desired by the Messenger to call a Meeting of the Fellows to publish the said Order which he declared he could not do, for that he was Burser of the said College, and had no Authority to do the same, nor was the said Order particularly directed to him but to the Fellows in General as the Messenger there declared.

And when one of the Fellows desired of the Messenger to have it Read, the said Messenger refused it,

it, saying, his directions were to Communicate it to the Fellows at a Meeting, whereas the said Fellows cannot meet together till they are Statutably called. Saving which Declaration of the said Messenger the Respondents were wholly Ignorant of the Contents of the said Order until the forementioned Citation of the First of *July* was served upon them.

And that in the ordinary course of Law all Decrees and Orders of Courts are served and executed by the Ministers and Officers of the said Courts, but not by any person or persons upon or against themselves as they conceive the present Case is.

*Alexander Pndsey.
Tho. Bayley.
Tho. Ludford.*

Aug. 5th. the Deputies of the Fellows attend, and give in their Answer in Writing (as before recited) which being Read were dismissed. Out of the Register.

S E C T. III

The Transactions from the Mandate for the Bishop of Oxford to the Lords Commissioners Visiting St. Mary Magdalen College.

THe King being willing to place such a President over the College, as by the Character he bore in the Church, being Bishop of the Diocess, might be an Honor to the Society, was Graciously pleased to grant the following Mandate. §. 1.

JAMES R.

The Kings
Man late to
the Fellows,
&c. to Admit
the Bishop of
Oxford Presi-
dent. 14th.
Aug. 1687.

TRUSTY and Beloved, We Greet you well :
Whereas the place of President of that Our
College of *St. Mary Magdalen*, is now void, Our
Will and Pleasure is, and We do hereby Authorize
and Require you forthwith, upon receipt hereof,
to Admit the Right Reverend Father in God,
Samuel Lord Bishop of *Oxon*, in the said place of
President, to hold and enjoy the same, with all
the Rights, Priviledges, Profits, Emoluments and
Advantages thereunto belonging, any Statute or
Statutes, Custom or Constitution to the contrary in
any wise notwithstanding, wherewith we are Gra-
ciously pleased and do accordingly hereby Dispense
herein; We bid you farewell. Given at our Court
at *Windfor* the 14th. day of *August*. 1687. In the
Third Year of Our Reign.

Superscribed.

To Our Trusty and Well-
beloved the Senior Fel-
low of *St. Mary Mag-
dalen College in Our
University of Oxford*,
or in his Absence to the
Senior Fellow reside-
ing there, and to the
rest of the Fellows
of the said College.

By His Majesties Command.

Sunderland P.

Note that this Mandate was sent after the hearing
of Mr. Farmers cause before the Lords Commission-
ers,

ers, whose Accusation is Printed in a late Book, without his Reply, on purpose to vindicate the proceedings of the Electors of Dr. *Hough*, but since there was no Juridical Sentence upon it, and the stress of the Case lies not upon his qualifications, I shall pass it by, and next insert my Lord Presidents Letter pursuant to the Mandate.

Bath August the 21st. 1687.

S I R,

THe King having been pleased by his Letter Mandatory to require the Fellows of *St. Mary Magdalen* College, to Admit my Lord Bishop of *Oxford* President of that College: His Majesty Commands me to let you know, that Immediately upon receipt hereof he would have you Assemble the Fellows, and Communicate to them His Majesties said Letters, and I am further Commanded to tell you, that His Majesty expects ready obedience to be paid to his pleasure herein, I desire you will send me an Account of your Proceedings as soon as you can, that I may acquaint His Majesty with it.

§. 2.
My Lord Presidents Letter to the Senior Fellow of the College, &c.

I am

S I R,

*Your Affectionate friend
and Servant.*

*To the Senior
Fellow of St.
Mary Mag-
dalen Col-
lege.*

Sunderland P.

To this Dr. *Pudsey* returned the following Answer.

May

May it please your Lordship.

§. 3.
The Answer
of Dr. Pudsey
the Senior
Follow to the
foresaid Letter.

UPon Saturday the 27th. of August last at Night, I received His Majesties Letter Mandatory, together with your Lordships; In behalf of the Right Reverend Father in God Samuel Lord Bishop of Oxon, which I the next Morning Communicated to the Fellows and Read them in the Chappel with all deference to His Majesty and your Lordship, the Answer that was given to me was, that they humbly conceived the place of the President to be full; And because your Lordship requires an Account of the Proceedings of the Society in this matter, I send their own words Unanimously agreed upon, and in Compliance to your Lordship with all Celerity of dispatch. My request is, that your Lordship would accept of this Letter with Candor, and favorably Interpret it as to the point of Obedience, and that I may have the Honor of being accounted.

Mag. Coll. Oxon.
Aug. 28th. 1687.

*Your Lordships most faithful
and most humble
Servant.*

Subscribed.
*To the Right Honorable
the Earl of Sunderland
Principal Secretary
of State.*

Alexander Pudsey.

By this Letter it appears, that the Fellows persisted in their obstinacy, in not paying obedience to the

the Kings Second Mandate for admitting the Bishop of *Oxford* their President.

Upon the Receipt of the Kings Mandate the Bishop Writ the following Letter to the Senior Fellow of *St. Mary Magdalen* College.

§. 4.

S I R,

YOU will receive herewith His Majesties Mandate to Admit me President of the College of *St. Mary Magdalen* in *Oxon*, together with a Letter of my Lord *Sunderland*, pursuant to His Majesties Command. I am indisposed, as I have been for some time, and not in a condition as yet to Travel; and therefore my request to you is, that upon Receipt of the King's Pleasure, you would do me the favor to Admit me by Proxy, that is, either the next Senior Fellow under your self, resident, or either of my Chaplains, Mr. *William Wickins*, or Mr. *Thomas Collins*, whom I depute in my stead, which is as valid in Law, as if I were present my self; and is the most usual customary Practice. And by so doing, you will oblige

The Coppy of the Bishop of *Oxford's* Letter to the Senior Fellow of *St. Mary Magdalen* College in *Oxon*, or in his absence to the Senior Fellow residing there.

S I R,

Your very Loving Friend
and Brother.

Samuel Oxon.

Dr. *Padsey* being the Senior Fellow returned this following Answer.

My

MY LORD,

Dr. Pudseys
Answer.

I Have perused your Lordships Letter, and in obedience to His Majesty have Read His Letter Mandatory, and my Lord *Sunderlands* Letter pursuant to the same business, in the Chappel before the Society this Morning. I askt the Fellows how they would proceed in this matter of concernment, and what Answer I was to return to my Lord of *Sunderland's* by the Messenger. They replied unanimously, that the place of the Presidentship was full, and that they could not Admit any other into the place.

This my Lord is the matter of Fact, and so I remain

Magd. Coll. Aug.
the 28th. 1687.

Your Lordships most humble
Servant.

Alex. Pudsey.

I shall now pass to what I find succeed.

Bath September the 9th. 1687.

MY LORD,

§. 5.
My Lord Pre-
sidents Letter
to the Bishop
of Oxford.

THE King Commands me to send your Lordship the three Inclosed Copies, that you may be the better informed in the Case of *Magdalen* College, the consideration whereof he has Committed to you the Dean of *Christ-Church* and Mr. *Walker*. The first is a Copy of a Letter to me, after the Delivery of the King's Mandate, which His Majesty having

having perused, sent for all the Fellows on *Sunday* last, to attend him at *Christ-Church* College, and Commanded them to Admit your Lordship President of that College without any further delay or pretence. Instead of Compliance they Signed a Paper, and sent it to me, containing a Direct refusal, but upon second thoughts became more sensible of their Duty, and subscribed another Paper in terms very submissive: Copies of both which you will herewith receive. Their meaning in the last Paper I am told is this: That if His Majesty shall think fit, by his own Authority, to Constitute you their President, they will very readily acknowledg and obey you, desiring only to be excused from Electing you, which they allege without breach of their Oaths they cannot do. His Majesty thought it necessary that your Lordship and the two Gentlemen above named should be made acquainted with these Circumstances for the direction in the advice you shall offer to His Majesty upon this occasion: I am further Commanded to tell you, that His Majesty intends to be at *Windsor* on *Saturday* Sennight, and would have you attend him there on the *Munday*, or *Tuesday* following, if your health will give you leave.

September the
4th. 1687.

*This was agreed on
and done by the
Fellows after His
Majesty had spoken
to them.*

I am

MT LORD,

*Your Lordships most humble
Servant.*

Sunderland P.

H

These

These following Papers are the Copies mentioned in the forefaid Letter.

§. 6.

At a Meeting of the Fellows of *St. Mary Magdalen* College in the University of *Oxon* in the Chappel of the faid College the *4th*. day of *September* in the Year of our Lord God, 1687. Between the hours of Four and Five in the Afternoon of the same day in obedience to His Majesties Command.

The Copy of one of the Papers mentioned in the preceding Letter.

John Smith Doctor of Divinity saith, that he is as ready to obey His Majesty in all things that lie in his power as any other of His Majesties Subjects whatsoever, but he apprehends it to be contrary to the Founders Statutes and his Oath to Elect the Right Reverend Father in God *Samuel* Lord Bishop of *Oxford* President of *St. Mary Magdalen* College in *Oxon*, and therefore it does not lie in his Power.

All these following agree with Dr. Smiths Answer above Written.

Dr. *Stafford*.

Mr. *Hammond*.

Mr. *Rogers*.

Mr. *Strickland*.

Mr. *Bayley*.

Mr. *Davys*.

Mr. *Bagshaw*.

Mr. *Fayrer*.

Mr. *Hunt*.

Mr. *Craddock*.

Mr. *Penniston*.

Mr. *Hyde*.

Mr. *Terbury*.

Mr. *Holt*.

Mr. *Thornston*.

Mr. *Holden*.

Mr. *Wilks*.

Mr.

Mr. *Henry Dobson* Master of Arts saith, that he is ready to obey His Majesty to the utmost of his power in the Election of the Bishop of *Oxon*.

Mr. *Robert Charnock* Master of Arts and Fellow of the said College saith, that he is ready to obey His Majesties Order in the Electing the Bishop of *Oxon* President of *Magdalen* College.

Alex. Pudsey Doctor in Divinity, and Fellow of *Magdalen* College in *Oxford* saith, that he doth agree with the rest of the Society.

In the Presence of
John Greneway, Pub. Notary.

I have omitted what passed betwixt His Majesty and the Fellows of *St. Mary Magdalen* College while the King was at *Oxford*; since there was nothing done by the Fellows which tended to a submission to the Kings Authority, but rather to a Justifying of their undutifulness in their Personal Address to him, which as it was so contrary to expectation at a time when the King Honored their University with his Presence, and was the only disobligation he had met withall in his whole Royal Progress: It cannot be wondred, that he resented it as he did, that a number of Fellows of a single College should persist so in their disobedience, in not Admitting the Bishop of their Diocess to be their President, an Honor they never had since their Foundation, if we may be allowed to call it an Honor to have a person of that Character their Supreme Governor.

Since therefore they were not required to *Elect* him, but only *Admit* him by vertue of the Kings Mandate, the King having by that superseded the

former for Mr. *Farmer*, no Man can think it strange, that the King resolved to Chastise them for their contempt in a method Justifiable by Canon, Civil and Statute Law, both to vindicate his own Royal Authority, as likewise to deter others from following such pernicious Examples.

C H A P. II.

The Proceedings of the Lords Commissioners
in the Local Visitation of *St. Mary Mag-
dalen College in Oxford.*

S E C T. I.

*The Transactions from the Citation sent October the 17th
1687. To the Nineteenth of the same Month.*

§. 1.

HIS Majesty being so greatly provoked by the disobedience to the second Mandate, and now finding it necessary to Assert his own Power, resolved upon sending down certain Local Visitors according to which I find it thus Registered.

Out of the
Register.

Memorandum, There being a new Commission with the Addition of *Thomas Bishop of Chester*, Sir *Robert Wright* Lord Chief Justice of the Kings Bench, and Sir *Thomas Jenner* one of the Barons of the Court of Exchequer with particular Power to them, or any two of them to visit *St. Mary Magdalen College* in the University of *Oxford*, the Commis-
oners

oners thought fit to meet at the Council Chamber this day, being the 17th. of October 1687.

The Commission was Read, and the same Officers confirmed as before.

The Lords Commissioners for Visiting *Magdalen* College, agreed upon the following Citation in Order to their Visitation.

By Thomas Lord Bishop of Chester, Sir Robert Wright Knight, Chief Justice of the Court of King's Bench, and Sir Thomas Jenner Knight, one of the Barons of His Majesties Court of Exchequer, His Majesties Commissioners (amongst others) for Ecclesiastical Causes and for the Visitation of the Universities and all Cathedral and Collegiate Churches, Colleges, Grammar-Schools, Hospitals and other the like Incorporations or Foundations and Societies, and particularly Authorized, and Impowered, by His Majesties Letters Patents, to Visit *St. Mary Magdalen College in the University of Oxford, &c.*

Citation of
St. Mary Mag-
dalen College,
October 17th.
1687.

Y Ou and either of you are hereby required forthwith to Cite and Summon Mr. *John Hough* the pretended President, and also the Fellows, and all other the Schollars, and Members of the said College of *St. Mary Magdalen* in the said University of *Oxford*, to appear before Us in the Chappel of the said College, on *Friday* next, being the 21st. day of this Instant *October*, at Nine of the Clock in the Morning, to undergo our Visitation, and further to Answer to such matters as shall then and there be objected against them. Intimating thereby (and we do hereby Intimate) unto them and every one of them, that

We

We Intend at the same time and place to proceed in our said Visitation, the absence or contempt of him the said pretended President, or the said Fellows, Schollars or other Members of the said College, or any of them to the contrary notwithstanding. And of the due Execution hereof you are to certifie us at the time and place aforesaid. Given under the Seal, which we in this behalf use, the 17th. day of *October*. 1687.

Subscribed.

To Thomas Atterbury and Robert Eddows.
Or either of them.

On *Wednesday October* the 19th. the Citation was fixed on the College and Chappel Doors, and on *Thursday* the Commissioners entred, attended by the three Troops of Horse that Quartred in the Town.

§. 2.

I shall from the Register, Original Papers, the Bishop of *Chesters* notes, or the Printed Relation, give a Faithful account of the First and Second Visitation.

FRIDAY Morning.

Out of the Register.

The Proceedings of the Lords Commissioners at Oxford, on Friday morning Octo. 21. 1687.

Note the reason why the

THE Lords Commissioners appointed by His Majesty under the Great Seal, for Visiting *St. Mary Magdalen* College in *Oxford*, met on *Friday Morning* the 21st. of *October* 1687. In the Chappel of the same College, and Adjourned to the Hall where their Commission being Read, their Lordships took upon them the Execution thereof, and Ordered the Fellows Names to be called over: And
Dr.

Dr. *John Hough* with several of the Fellows and Schollars appearing, the Lord Bishop of *Chester* spoke to them upon the occasion of the Visitation as followeth.

Commissioners left the Chappel, was by reason of the Crowd, and for that provision was

not made for their sitting there.

Gentlemen,

IF he who provokes the King to Anger sins against his own Soul, what a Complicated mischief is yours, who have done and repeated it in such an Ingrateful and Indecent manner as you have done, and upon such a trifling occasion? You were the first, and I hope will be the last, who did ever thus undeservedly provoke him. There is a great Respect and Reverence due to the Persons of Kings; and besides the Contempt of his Authority in this Commission, you were so unreasonably Valiant as to have none of those fears and jealousies about you, which ought to possess all Subjects in their Princes Presence, with a due veneration of his Sovereignty over them. 'Tis neither good nor safe for any sort of Men to be wiser than their Governors; nor to dispute the Lawful Commands of their Superiors, in such a licentious manner, that if they sometimes obey for wrath, they oftner disobey, (as they pretend,) for Conscience sake. The King is God's Minister, he receives his Authority from him, and Governs for him here below; and God resents all Indignities and injuries done to him, as done to himself. Now God hath set a Just and Gracious King over us, who has obliged us in such a Princely manner, as to puzzle our Understandings as well as our Gratitude; for
he

he hath bound himself by his Sacred promise to support our Altars, at which he does not Worship; and in the first place to maintain our Bishops and Arch-Bishops, and all the Members of the Church of *England*, in their Rights Privileges and Endowments.

No doubt but he will do his own Religion all the Right and Service he can, without unjust and cruel Methods, which he utterly abhors; and without wronging ours, which is by Law Established; and by his own Sacred and free promises, which have been more than once renewed, and repeated to us, without our seeking or soliciting for them, which we, under some Princes, might have been put to crave upon our bended Knees. This is a most Royal and Voluntary Present the King hath made to his Subjects, and calls for a suitable veneration from them; notwithstanding the pretended *Oxford* Reasons, which were Publish'd (by whose means and endeavors you best know,) to obstruct it: As if the King had not Thorns enough growing in his Kingdom, without his Universities planting more. Now a Prince so exceedingly tender of his Honor as he is, so highly Just to all, and so kind beyond example to his Loyal Subjects and Servants of what persuasion soever, is one under whom you might have had all the ease, satisfaction, and security imaginable, if you had not been notoriously wanting to your selves, and under a vain pretence of acting for the preservation of our Religion, you had not wilfully, against all Reason and Religion, expos'd it, (as much as in you lay,) to the greatest scandal and apparent dangers Imaginable. Your disingenuous, disobliging, and petulant humor, your obstinate and unreasonable stiffness, hath brought this present Visitation upon you

you; and might justly have provoked His Majesty to have done those things in his displeasure, which might have been more prejudicial to this, and other Societies, then you can easily imagin.

But tho' you have been very irregular in your provocations, yet the King is resolved to be exactly Regular in his proceedings; And accordingly, as he is Supreme Ordinary of this Kingdom, which is his Inherent Right, of which he never can be divested, and the unquestionable Visitor of all Colleges; he hath delegated his Commissioners with full Power to proceed according to the just measures of the Ecclesiastical Laws, and his Royal Prerogative against such offenders as shall be found amongst you, and not otherwise.

'Tis a great grief to all sober Men to see any, who would be thought True Sons of the Church of *England*, act like Men frighted out of their wits, and Religion, as you have certainly done.

Never any True Son of the Church of *England* was, or will be disobedient to his Prince; the Loyalty which she hath taught us, is absolute and unconditional. Tho' our Prince should not please, or humor us, we are neither to open our Mouths, or lift up our hands against him.

Yours, like all other Corporations, is the Creature of the Crown; and how then durst you make your Statutes spurn against their Maker? Is this your way to recommend and adorn our Religion, and not rather to make it odious; by practising that in such a froward manner which our Church Professes to abhor? Do we not pray for the King, as the Head of it under Christ? Do we not acknowledge him for the Fountain of Honor? And does not

Solomon Command his Son to fear God and the King, the one with a Religious, the other with a Civil fear? Is he not the Lord's Anointed, and not to be toucht but with Reverence, either in his Crown or Person? And why should we not render then to all their dues, Fear to whom Fear, and Honor to whom Honor? Is not this an Eternal tie both of Justice and Gratitude? For where the Word of a King is, there is Power; And who may say unto him, what dost Thou? Are we not, next to God, and his Good Angels, most beholden to him for our safety, whole Honor and Lawful Authority We are now come to Vindicate? Is he not the Father of our Country, and ought he not to be more dear to Us than our Natural Parents; especially considering how Indulgent he has been to Us, and what care he dayly takes to keep us from biting and devouring one another, we know not why. Is not he the Center of the Kingdom, and do not the concurrence of all Lines meet in him, and his fortunes; and how can we then understand the limits of self love, if a tender Sense of his Honor and happiness be not deeply rooted and imprinted in our Souls? 'Twas neither dutifully nor wisely done of you, to drive the King to a necessity of bringing this Visitation upon you. And as it must needs grieve every Loyal and Religious Man in the Kingdom to the heart, to find Men of your Liberal Education and Parts so Untractable, and Refractory to so Gracious a Prince; so it will be very mischievous to you, at the Great Day of Gods Visitation; Who will then be the greatest losers by your Contumacy: For God will Revenge this among your other Crimes, that you have behav'd your selves so ungratefully towards his Vicegerent, as to oppress his Royal Heart with

with grief for your Stubbornness, to whom by your chearful Obedience, you ought to have admittred much cause of rejoycing. They who Sow the Seeds of Disobedience, have never any great reason to boast of their Harvest, for whatsoever they vainly promise themselves in the beginning, they are in the end ashamed, and afraid of the Income of their evil Practices; and indeed every sort of disobedience hath so ill a report in the World, that even they who are guilty of it themselves, do yet speak ill of it in others: Let therefore the disreputation, and Obloquy which it will inevitably bring upon you, make you out of Love with it; or if that will not do, let the Stings of your guilty Consciences, and the fear of Divine Vengeance restrain you; or if you are still Insensible of all these, yet at least let the present fear of those Temporal Punishments, which the Laws of the Kingdom have superadded to the Contemnners of Gods and the Kings Authority, oblige every Soul that hears me this day to be Subject to the Higher Powers. If neither a most Merciful God, nor a most Gracious King can please you, your wages will be recompence upon your own Heads: Were it not for this Serpent of discontent and jealousies, which are now so busie in it, this Kingdom would be like the Garden of *Eden* before the Curse, a Mirrour of prosperity and happiness to all the World besides, but this Serpentine humor of Stinging and Biting one another, and of Tempting Men to Rebel against God and the King, because others who differ from us in Judgment are as happy as our selves, will as certainly turn us, as it did our first Parents, out of Paradise. Our Nation is in greater danger of being destroyed by Prophaness, then Popery; by Sin, then by Superstition; by

other Iniquities, then by Idolatry ; and I pray God we may not see Sacrilege once more committed under the pretence of abhorring Idols, as I my self have seen in this place. If there be any among you who have sinn'd with so high a hand against our Gracious Sovereign, as the obdurate Jews did against our Saviour, saying, we will not have this Man to Rule over us ; such your petulant humor, such your shameful Injustice and Ingratitude, will deserve the just Animadversions of this Court. What distempers this College is sick of, which we are now come to visit by the Kings Commission, your selves are best able to tell us : We are informed of too many already, and yet we suspect there may be more ; and therefore be but Ingenuous, and make a Conscience of giving us sincere Answers, and you shall find, that we will abate nothing of the just measures of our Duty for fear or favor, to satisfy the Importunities of any Man ; being well assured that God and the King will bear us out. I am sorry that you should any of you run so far upon the score of the Kings Royal Patience and Pardon, as some of you have already done ; And that you should be in such vast Arrears of Duty and Respect to him as you are. But they go far who never turn : The Influence you may have upon other parts of the Kingdom, makes me Charitably hope, that your future Fidelity, and Allegiance will for ever Answer your Duty, and the Kings just Expectation ; And therefore I hope it will not be in vain for me to exhort you in the Bowels of Christ to a more entire submission, and obedience ; because if such Men as you, bred in so Famous an University, are not thoroughly convinced of the necessity of it ; the more Popular you become, the more pernicious will you be in encouraging

ing your deluded Admirers, who have their Eyes upon you from all parts of the Kingdom, to be as Disobedient and Contumacious as your selves: by which the Honor and Authority of the King may be diminished, and the peace both of Church and State come to be endanger'd. Obey them who have the Rule over you, either in Church or State, and submit your selves before it be too late; for your contumacious behaviour towards them will yeild you no profit at all; but your Obedience much every way; the former will prove like the Sin of Witch-craft, but the latter will be better accepted than Sacrifice, because in that you only offer up a beast to God, but in this you Sacrifice your Passions, you slay them and offer them up to Gods service. Remember Error seldom goes in Company with Obedience, and that none are so likely to find the way to Eternal happiness in the end, as they who follow the Conduct of their Superiors from the beginning; not with Eye service, as Men pleasers; but in singleness of Heart, Fearing God and the King; and whatsoever you do, do it heartily; as unto the Lord, and not unto us Men: And the Lord give you understanding in all things.

The Speech being ended, the Lords adjourned till the Afternoon to the Common Room of the College.

FRIDAY

FRIDAY Afternoon.

AT which time the Court being sat, Dr. *Hough* in behalf of himself and the Fellows demanded a Copy of their Lordships Commission, which was denied him, and the Court ordered to proceed, and then admonished the Fellows to produce the Registry of the College Affairs, and also to give an account of what Leases had been Lett for two Years last past, together with the Benefactions given to the College and likewise ordered them to bring in the Buttry Book to Morrow Morning, to which time they adjourned.

SATURDAY Morning, October 22d. 1687.

§. 3.

DR. *Hough* was called in, and it appearing to their Lordships, that his Election to the Presidents place was made null and void by a Sentence given by the Lords Commissioners for Ecclesiastical Causes, and that he the said Dr. *Hough* had legal notice of the same, but notwithstanding the said Sentence he had and did still refuse to submit thereunto. The Court ordered him forthwith peaceably to depart the College, and deliver up the Keys of the Lodgings, and struck his Name out of the Buttry-Book; and having so done, declared to the Fellows, that he was Actually Expelled, and admonished them not to own him as their President.

Then the Court askt the Fellows whether they would admit the Bishop of *Oxon* their President, according to the Kings Mandate, but all of them refused,

refused, except Mr. *Charnock*, but said they would not oppose it.

Then adjourned till the Afternoon.

SATURDAY Afternoon.

DR. *Hough* came into the Court, and made his protestation against the proceedings, and appealed from the same, as Illegal, Unjust and Null, as he asserts. Whereupon there was a Tumultuous *Hum* or *Acclamation* made by the by-standers, which gave the Court some disturbance, in so much, that they thought fit to bind over Dr. *Hough* in 1000 *l.* and two Sureties in 500 *l.* each, to appear at the Kings Bench, and again admonished Dr. *Hough* to quit the College, which he accordingly did that Night.

Then adjourned to Tuesday Morning.

Thus far out of the Register. But because the Paper sent with the Letter to the Earl of *Sunderland* is more full in several particulars, I shall Insert it after the following Letter, together with such Additions as the Bishop of *Chesters* own Journals afford me.

The Lords Commissioners sent the Following Letter to my Lord President, Dated 22d. October 1687.

MY LORD,

BY His Majesties Messenger, we have sent your Lordship a particular account of our proceedings here (to which we humbly refer) in which your Lordship will perceive the Temper of that Society ;

§. 4.
See the Answer to this after the Pro-
gramma §. 6.

My

My Lord we hope your Lordship will easily believe, that we are not unwilling to do any thing which may vindicate the Kings Honor and Authority, but we humbly desire to be well advised by your Lordship in the Methods of it, for we are now a little at a stop by reason of the Bishop of *Oxon's* not appearing in Person, having no Power as we humbly conceive, either by the Kings Mandate or by our Commission to Admit him by Proxy, His Majesties Letter Mandatory for the same being directed to the College, who all but two or three do as yet refuse it. We therefore humbly Pray your Lordship to dispatch His Majesties Mandate directed to Us to Admit the Bishop or his Proxy, or that you would please to give us some other Directions, such as your Lordship in your Great Wisdom shall Judge more expedient. We do crave leave also to Intimate to your Lordship, that it is our humble Opinion, that We cannot proceed any further then Expulsion against Dr. *Hough* (which your Lordship will find already done) according to the Power we have by the Commission, and we humbly Pray your Lordships Pardon and further Commands, which shall be readily obeyed by His Majesties most Dutiful Subjects, and

My Lord since the Writing of this Letter, We have reason to believe we shall have an entire submission from the College on Tuesday next, for Dr. Hough since his Expulsion, hath left the College and taken Lodgings in the Town.

Your Lordships most humble Servants.

Tho. Cestrienfis.
R. Wright.
Tho. Jenner.

Oxford the 22d. Octob. 1687.

His Majesties Commissioners for Visiting the College of St. *Mary Magdalen* in *Oxford*, being Yesterday [viz. *Thursday* the 20th. of *October*] come at the time appointed [viz. *Friday Octob. 21.*] for the President Fellows and Schollars thereof to appear, their Lordships took upon them the Execution thereof: My Lord Bishop of *Chester* made a Speech to them upon the occasion of the Visitation, and after an adjournment of the same, to the Afternoon, there then appeared Dr. *Hough* and several of the Fellows, and most of the Schollars and Officers of the College: Dr. *Hough* objected to the shortness of the time from the notice of the Visitation, and prayed a Copy of the Commission and time to consider of it (which was over ruled by the Court) saying, that if he and they could take any advantage from the Commission, he hoped the King and their Lordships did not intend to bar them of it: And [in his own Name and the greatest part of the Fellows,] said, that he submitted to the Visitation so far as was consistent with the Laws of the Land, and the Statutes of the College and no further, and that he could suffer no alteration of the Statutes, neither by the King nor any other Person [for which he had taken an Oath, from which he could not swerve, and thereupon Quoted the Statutes confirmed by King *Henry* the Sixth and their Oath, that they should submit to no Alteration made by any Authority] [The *Oxford* Relation saith, that my Lord Chief Justice answered, you cannot Imagin, that we Act contrary to the Laws of the Land, and as to the Statutes the

§. 4.

The account sent by the Lords Commissioners of their proceedings till *Saturday* night

Octob. 22.

Note that what is contained betwixt these

[] is what is in the Bishop of *Chester* and Dr.

Th. mas Smilbs Diary and not in the Account

sent by the Lords Commissioners.

Friday Afternoon.

K

King

King has dispensed with them. Do you think we come here to Act against Law?]

Then the Sentence given the 22^d. Day of June, 1687. Against Dr. *Hough's* Election, and for the removing him from the Office of President of the College was Read, and he was asked whether he knew of it being given against him: He replied, he had notice of it, but said he was no party to it, and so was advised it did not any wise concern him.

The Sentence likewise against Dr. *Aldworth* and Dr. *Fairfax* for suspending them, was Read, and the Petition of Dr. *Aldworth*, Dr. *Fairfax* and others delivered to my Lord President on the Tenth of April last (being about Five Days before their Election of Dr. *Hough*), was also Read to them to which was reply-

* It was Answer sufficient to have obliged them not to have proceeded to Election till they had particularly made out their Information against Mr. *Farmer*.

ed, that they had no Answer from my Lord President, but that the King expected to be obeyed, and they receiving no other Mandate than that for Admitting Mr. *Farmer*, they proceeded to Elect Mr. *Hough*.

Then after their Lordships orders to them to bring in some Books [viz. The Register] and other Papers relating to the Revenues and Government of their College [which the Doctor promised they should have next Morning,] they adjourned to Eight of the Clock this Morning.

SATURDAY Octob. 22^d.

The words of the Account are, their Lordships proceeded and proposed these two Questions to

Who being met and such Books brought in [Dr. *Hough* being called in, the Bishop of *Chester* told him, Doctor, here is a Sentence under Seal before us, of the Kings Commissioners for Visiting the Universities, by which the Election to the Presidentship of *Magdalen* College is declared Null and

Void,

Void, which you heard Yesterday Read, and of which you Confess your self to have Legal notice before, by being fixed upon the Doors. This Sentence and the Authority by which it was passed you have contemned, and in contempt thereof have kept Possession of the Lodgings, and the Office of President to this day, to the great contempt and dishonor of the King and his Authority.] Are you yet willing, upon better and second thoughts to submit to the Sentence passed by their Lordships against you or not?

Dr. Hough,
whether he
was willing,
&c.

To which he Answered, that the Decree of the Commissioners is a perfect Nullity from beginning to End, as to what relates to him, he having never been Cited nor ever appeared before them, either in his Person, or Proxy: Besides his Cause it self was never before them: Their Lordships never enquiring, or asking one question concerning the Legality or Statuteness of the Election, for which reason he is informed, that That Decree was of no validity against him according to the Methods of the Civil Laws, but if it had, he was possessed of a Freehold according to the Laws of *England* and Statutes of the Society, having been Elected as Unanimously, and with as much Formality as any of his Predecessors, Presidents of the said College, and afterwards Admitted by the Bishop of *Winchester* their Visitor as the Statutes of the College required, and therefore he could not submit to that Sentence, because he thought he could not be deprived of his Freehold, but by Course of Law in *Westminster-Hall*, or by being some way Incapacitated according to the Founders Statutes which are Confirmed by King *James* the First.

These Arguments will particularly be answered.

Second Question put to Dr. *Hough* was, whether he would deliver up the Keys and Lodgings (as by a Clause in the Statutes of Admission he is tyed to do) to the use of the President who hath the Kings Letters Mandatory to be Admitted into that Office.

To which he Answered, that there is not, neither can there be, any President whilst he Lives, and obeys the Laws of the Land and the Statutes of the place, and therefore doth not think it reasonable to give up his Right, nor the Keys and his Lodgings now demanded of him. He takes the Bishop of *Winchester* to be his Ordinary Visitor, and yet he would deny him the Keys [he takes the King to be his Extraordinary Visitor as he believes, but it had been controverted whether the King had Power to Visit, as in *Coveny's Case*, 4^o *Eliz.*] and looked upon their Lordships Commanding it to be a requiring him to deliver up his Office.

He said, he had appeared before their Lordships as Judges, and that he now Addressed himself to them as Men of Honor, and Gentlemen, and did beseech them to represent him as Dutiful to His Majesty to the last degree, as he always will be where his Conscience permits to the last Moment of his Life, and when he is Dispossessed here he hopes they will intercede, that he may no longer lie under His Majesties displeasure, or be frowned upon by his Prince which would be the greatest affliction, that could befall him in this World.

Then their Lordships admonish'd him three times to depart peaceably from the Presidents Lodgings, and to Act no more as President or pretended President of the College in Contempt of the King and his Authority: which he refusing to do, [Mr. *Lee*
Proctor

Proctor to the Lords accused his Contumacy, and prayed the Judgment of the Court, which was thus pronounced; The Lords Commissioners for Ecclesiastical Causes, and for Visiting the Universities have Decreed the Presidents place of this College to be Null and Void: Therefore we by the Authority to us committed, do Order and Command you Dr. *Hough* forthwith] to quit all pretensions to the said Office, upon which they Ordered his Name to be struck out of the Buttry-Book, which was accordingly done, and admonished the Fellows and other Members of the Society, no longer to own him as their President.

The words of the Account are, then the Lords proceeded to give Judgment against him, viz. That he forth with, &c.

Then the Kings Mandate for Admitting the Bishop of *Oxford* was Read, and they were then Ordered to withdraw, and being soon after called in again, the Question was put to the Fellows singly, one by one, whether they would Admit the Bishop of *Oxford* their President, according to the Kings Mandate. Dr. *Pudsey* said, he would submit to the King, and would be by, but could not Act, being Burser. Dr. *Thomas Smith* replied, My Lords Commissioners, if it be the Kings pleasure to make the Bishop of *Oxford* President of this College, and your Lordships Acting by that Authority have declared and made him such, I do, because I must, submit, I make no opposition. Mr. *Charnock* said, he was ready to obey the Kings Mandate; all the rest of the Fellows refused to receive him as President, as being against their Statutes and Oaths, and that which would make them guilty of Perjury. All whose Verbal Answers were taken in Writing by the Lords Commissioners, and their Lordships after some time said, if you think we have not taken the Answer right put them

See for this, *sect. 2. § 3.*

From Dr. *Smiths* Diary. See his other Answer §. 10.

them in Writing your selves against the Afternoon, to which time they adjourned the Court.

Afternoon.

The Court being Sate in the Afternoon, Dr. *Hough* appeared with a great Rabble of followers, and after a short time said, whereas your Lordships this Morning have been pleased, pursuant to the former Decree of the Lords Commissioners, to deprive me of my place of President of this College, and to strike my Name out of the Buttry-Book: I do hereby protest against the said proceedings, and against all that you have done, or hereafter shall do in prejudice of me and my Right, as Illegal, Unjust and Null, and I do hereby Appeal to our Sovereign Lord the King in his Courts of Justice. Upon which there was a Tumultuous *Hum* in the Room, which the Lords Commissioners resented very much, and said, they would never suffer the Kings Authority to be so affronted; my Lord Chief Justice said, he would defend the Kings Authority while he had Blood in his Body, and told Dr. *Hough* that he was the occasion of this misbehaviour by his popular Protestation, which he might have made in the Morning, that he had broke the Kings Peace, and that now they had brought in the Civil Power over them, and that if need were they would use the Military; that he must Answer that affront of the Kings Authority at the Kings Bench Court. Upon which he was bound in a Thousand pound Bond, and his Sureties in Five Hundred pound a piece.

Dr. Tho. Smiths
Diary.

Then the Bishop of *Chester* gave the Doctor this Answer to his Appeal, Doctor, we look upon the Appeal as to the matter and manner of it to be unreasonable, and not to be admitted by us: First, because it is in a Visitation where no Appeal is allowable:
Secondly,

Secondly, because our Visitation is by Commission under the Broad Seal of *England*, which is the Supreme Authority, therefore we over-rule this Protestation and Appeal, and Admonish you once for all to avoid the College, and obey the Sentence. The Doctor and Fellows declared their grief for the disorder of the Crowd, and disclaimed their having any hand in it.]

After which Dr. *Pudsey's* Letter to the Lord President being Read, their Lordships askt the Fellows concerning the Kings Verbal Command to them at *Oxford*, to which they said it was to Elect the Bishop of *Oxford*, which they could not: Then being askt why they did not *Admit* him, which was all the Kings Letter required, and to which the Verbal Command referred; Eight of the Fellows said they were not there, and Thirteen owned they were, and gave consent to the Letter.

See this Letter c. 1. sect. 3. §. 3.

Upon Complaint made by the Lords Commissioners of the Hubub before mentioned, the Vice-Chancellor published this following Programma.

Quum nihil minus deceat Viros Ingenuos, nedum Academicos ad optima enutritos, quam morum Inelegantia, & Rusticitas; Quam absonum videri debeat Adventantes strepitu, & sibilis excipere, & pro Cœtu Philosophorum, turbam Morionum Peregrinis ostentare!

§. 5.

Quocirca dolemus hac in parte peccatum esse in Viros Illustres, & admodum Reverendos; & quod omnium Gravissimum est, Regia insuper Autoritate munitos; speramusque hoc Indecentiæ, vel potius contumeliæ, aut saltem maximam partem, ab Infr-

frunitis hominibus & de plebis Fæcula natis, omnino provenisse; monemusque omnes, quotquot sunt Scholares, ut ab omnibus Illiberalibus Disteriis, sanis, Pedum suppositione, male feriatorum & Turbinum Cachinno, Screatu, clamore, & murmure *ἀσποσ* *δυσκόως* penitus abstineant.

Si quis vero in posterum, in aliquibus istius modi deliquerit, sciat se non mediocres Temeritatis & Insolentiae suae pœnas luiturum.

Octob. the 24th.
1687.

Gilb. Iron-side
Vice-Cancelarius.

§. 6.

To the Lords Commissioners Letter and the account sent of their proceedings, I find this Answer given by my Lord President.

Whitehall Octob, 23. 1687.

MY LORDS,

My Lord Presidents Letter to the Lords Visitors, in Answer to theirs of the 22d. of October.

I Have received your Lordships of the 22d. with the account of your proceedings, which His Majesty is well satisfied with, I herewith send you such an Order for Admitting the Bishop of *Oxford* as you desired, and am directed by His Majesty to acquaint you, that if the Fellows of the College can be brought to submit to the Admission of the Bishop as their President, His Majesty is Graciously pleas'd no Punishment should upon that account be Inflicted by you upon such as do submit, but if any of them be refractory you are to proceed against them according to the Commission, and His Majesty would have you also

also to Inspect the Constitutions, Orders and Statutes of the College, and to Enquire into the behaviours of the Members thereof, and what abuses may have been Committed either by mis-applying their Revenues or other mis-doings, a particular account of which together with the Names of the Offenders, you are to transmit up to His Majesty, that he may give such further Order as shall be requisite in the matter.

I am

MY LORDS,

*Your Lordships most humble
Servant.*

Sunderland P.

The Lords Commissioners Answer to this, I shall Insert in it's place, and now proceed to what was transacted at the Court held, *October the 25th*. In the Morning.

Dr. *Stafford* Read the following Paper in Answer to what was objected on *Friday*, that a Mandate Implied an Inhibition, which I think fit to Insert out of the Printed Relation.

§. 7.
October 25th
Morning.

To the Right Reverend and Honorable the Commissioners for Visiting of St. Mary Magdalen College in Oxon.

May it please your Lordships,

ON *Friday* last in the Afternoon, you seemed to Insist very much upon this particular, *viz.* That His Majesty in Commanding the Fellows of
L the

To these Arguments Answer will be given in due place.

The obligation of this Oath will be examined.

the said College to Elect Mr. *Farmer* President, did thereby Inhibit them to Elect any other Person whatsoever, which has not yet been made to appear to be Law, out of Civil, Canon or Common-Law, neither is it agreeable to reason, that a Command to Elect a Person incapable should oblige not to Elect a Person Capable, that being a kind of Contradiction in *Terminis*, yet this being granted it cannot at least affect the said Fellows, or Invalidate the Election of Dr. *Hough*, notwithstanding His Majesties Mandate in behalf of Mr. *Farmer* wholly incapable of the place. The Fellows cannot be said to be Guilty of any disobedience, or disloyalty in proceeding to the Election of another Person, who was qualified according to the Statutes, being forced to make an Election, for they are obliged by the Statutes of the College, when called together to Elect a President or any other Officer, under pain of Expulsion perpetual from that College, to meet and make an Election, which Punishment they Incur *Ipso facto*, who either refuse to meet when so called, or being met do not Nominate and Elect a Person into the Office void, as appears by the Statutes of the College, *Titulo de numero Scholarium & Electione Presidentis*. Now according to the Founders direction in the said Statute on the 9th. of *April* last, the Fellows were called together by the Vice-President to Elect a President in the place of Dr. *Clark* Deceas'd. The Oath required to be taken before the Election was Administred to them by the Vice-President, whereby they are obliged to Nominate and Elect a Person, that either is or has been Fellow of *Magdalen* College or *New-College*, which Oath when the Fellows had taken, it was not in their Power to Elect Mr. *Farmer*, and yet then they were obliged

obliged to make an Election, under pain of perpetual Amotion from the College, as appears by the aforesaid Statutes, and it cannot be imagined that His most Sacred Majesty did expect, that the Fellows should be either Perjur'd or forfeit their Right to their Fellowships rather than dis-obey his Command. His Majesty having most Graciously * declared, that * This first is a strange plea, that will be answered. Conscience ought not to be forced, and that none of his Subjects should be molested in the enjoyment of their Rights and Privileges. Now that our proceeding to Election, cannot lay any Imputation of disobedience or disloyalty upon us, will thus be made appear. Either we had Power to Elect or not; If we had not, to what end or purpose did His Majesty Command us to Elect one; If we had, our Power was restrained to persons so and so qualified, or we were at liberty to choose whom we pleased. But we could not do the latter, as appears by our Statutes, therefore we could not Elect Mr. *Farmer* being not Invested with any Power to Elect a person not qualified, and if we had so done, our Election had been Void and Null in it self, and the Person Elected lyable to be turned out by our Visitor; As for the Decree of His Majesties Commissioners (in pursuance whereof your Lordships have admonished Dr. *Hough* to recede from the place of President and quietly to resign the Keys of his Office, and struck his Name out of the Book) we humbly conceive it to be Null and Void in it self, to all intents and purposes, Dr. *Hough* being thereby deprived of a Free-hold for Life, the which he was duely and legally possessed of, without ever being called to defend his Right, or any misdemeanor objected against him; wherefore we humbly beg of your Lordships, that Dr. *Hough* may be

The Dilemma will be solved when I answer the objections.

The reason of this will be answered in the last Chapter.

permitted to defend his Right and Title to the Presidentship at Common Law, before any other person is posselt of his place.

Oxford Relation, which all along I so style to distinguish it from other Relations or Papers.

This, saith the *Oxford* Relation, their Lordships having perused would not allow to be Read publicly, but they asked the Fellows whether they would Sign it, Challenging them to do it at their Perils, then the Fellows withdrew into the Hall where being not satisfied, it was necessary to Sign a Plea, which their Lordships refused to admit, returned the Paper into the Court only subscribed by Dr. *Fairfax*, and Dr. *Stafford*, the latter after some debate desiring to withdraw but Dr. *Fairfax* stood to it.

§. 8.

After the Plea of Dr. *Stafford*, *Tuesday* Morning the 25th. of *October*. 1687. Was thus let fall, Mr. *Wickins* Procuratar and Chaplain to the Bishop of *Oxon*, was called, who delivered the Proxy, the Tenor whereof followeth.

The Bishop of
Oxfords Proxy.

Omibus ad quos hoc præsens Scriptum prævenit salutem. Ego *Samuel* permissione Divina *Oxon*. Episcopus, & Præses Collegii *Magdalensis* infra Universitatem *Oxon*. situati vigore litterarum Mandatariorum Domini Regis Constitutus: Dilectum mihi in Christo *Gulielmum Wickins* in Artibus Magistrum Clericum & Sacellanum meum, ut vice & Nomine meo ad Officium Præsidentis Collegii prædicti una cum membris, Juribus, & pertinentiis eidem spectantibus Universis admittatur; nec non ad iuramenta solita, & requisita, in Animam meam præstanda, cæteraque omnia facienda & Exequenda in ea parte requisita, Procuratorem & Deputatum meum (ipse vali-

valitudine impeditus quo minus prædictæ admissiõni
personaliter interesse valeam) firmiter constituo per
presentes Datas & Sigillatas Vicesimo 10. die mensis
Octobris Anno Tertio Regni Jacobi Secundi Angliæ,
Scotiæ, Franciæ, & Hiberniæ Regis, Fidei Defensoris
Annoque Domini. 1687.

In Præsentia

W. Bigges.

Ric. Brooke.

Georgii Cholwill.

The Bishop of Oxforde's Seal

is in the Margin,

Subsigned.

Sa. Oxon.

Then was Read the following Mandate.

JAMES R.

Right Reverend Father in God, Right Trusty
and Well-beloved, and Trusty and Well-
beloved, We Greet you well: Whereas We did
by Our Letters bearing Date the 14th. Day of
August last, Authorize and Require the Fellows of
St. Mary Magdalen College in Our University of
Oxon, to Admit the Right Reverend Father in
God *Samuel* Lord Bishop of *Oxon*, into the place
of President of the said College, with all the
Rights, Privileges, Emoluments, and Advantag-
es thereunto belonging, any Statute, or Statutes,
Custom or Constitution to the contrary in any
wise notwithstanding, wherewith We did dis-
pente in his behalf. And whereas the Fellows of
the said College not obeying our said Letters Man-
datory, We thought it requisite to Impower you
to Visit the said College, and all the Members
thereof.

§. 9.
The Kings
Mandate to
the Visitors
for admitting
the Bishop of
Oxford Presi-
dent, &c. 23d.
Octob. 1687.

thereof. Our Will and Pleasure is, and We do hereby Authorize and Require you, that in case the said Fellows do still persist in refusing to Admit the said Bishop of Oxon as their President, you do forthwith Admit him, if present, or in case of his absence by his Proxy, into the place of President of the said College, any Statute or Statutes, Customs, or Constitutions to the contrary in any wise notwithstanding, with which we do by these presents dispense, And for so doing, This shall be a sufficient Warrant and Authority to you, and all other Persons whom it may concern, and so We bid you heartily farewell. Given at our Court at *Whitehall* the 23^d. of *October*. 1687. In the 3^d. Year of our Reign.

This was Superscribed.

*To the Right Reverend Father
in God Thomas Lord Bishop
of Chester. Our Right
Trusty and Well-beloved, Sir
Robert Wright K^t. Ch. J.
of the Pleas before Us to be
holden Assigned. Our Trusty
and Well-beloved Sir. Tho.
Jenner K^t. one of the Ba-
rons of our Court of Ex-
chequer, Our Commissioners
for the Visitation of St.
Mary Magdalen College in
Our University of Oxon.*

*By His Majesties
Command.*

Sunderland P.

The

THe foregoing Proxy together with the Kings
Mandate being Read for the Bishop of Oxon : §. 10.
Tuesday Morn-
ing Octo. 25.
The Fellows being present were askt, if they would
Admit and Instal the Bishop of Oxford made President
by the King, and declared such by their Lordships.
Dr. Pudsey being first asked the Question refused to
Act, but seemed to yield to be present.

Dr. Thomas Smith being askt the same Question by
the Bishop of Chester, Read the following Answer.

My Lords Commissioners,

I Answer with all Humble and Dutiful submission
to the Kings Majesties Authority, and your
Lordships Visitation Power, That it is not in my
Power to do this. Your Lordships, who have depriv-
ed Dr. Hough, and have declared the Bishop of Ox-
ford President, may Instal him : This Method being al-
together new and extraordinary, I cannot be satis-
fied how I can or ought to be the Executioner of your
Lordships Sentence. Besides I beg leave to propose
a short Case to your Lordships, whether or no I
can Instal or give Possession without being Im-
powered, and Authorized by a Rule out of the
High Court of Chancery or Kings Bench for my
Security, if there were nothing of Conscience in the
Case.

To this the Lord Chief Justice replied, to this
purpose, that as they were His Majesties Commis-
sioners for this Visitation, they had the Kings Power of
Chancery and Common Law.

Then:

* The words of the Register are, and forthwith admitted the Bishop of *Oxon* President by his said Procurator, from thence they adjourned to the Presidents Lodgings and finding the Door lockt demanded the Keys, but they being not to be found, they ordered the Door to be broken open, which was accordingly done, and the Lords went in and viewed the said Lodgings; having so done adjourned to the Common Room, and Entred the Bishops Name as President in the Buttry-Book.

Then the Lords adjourned to the Chappel * where the Bishop of *Chesler* put Mr. *Wiggins* into the Presidents Seat where he took the Oaths which the Statutes enjoy to the President at his Admission, and the Oath of Allegiance and Supremacy, the latter of which the Bishop of *Chesler* Ordered him to take upon his Knees, which he did accordingly; then their Lordships Conducted him to the Door of the Presidents Lodgings, where knocking Thrice and the Doors not being opened, they returned to the Common Room, and Commanded Mr. *Atterbury* to fetch a Smith to knock open the Door, which was done accordingly, their Lordships being present all the while and none of the Fellows but Mr. *Charnock* assisting, or being as much as present at either of the performances.

§. 11.
Oxford Relation pa. 30.

Then their Lordships being returned to the Common Room, they Entred the Bishops Name into the Buttry-Book. Dr. *Fairfax*, saith the *Oxford Relation*, desired leave at leisure to speak, and being permitted he told their Lordships, that they had been doing that which he by no means could consent to. The Bishop of *Chesler* told him he was big to be delivered of his own Destruction, and asked him if he would submit to the Bishop of *Oxon* Installed President by Vertue of the Kings Mandate, to which the Doctor Answered, he would not nor could not, because they had a Statutable and Legal President already. And the Lords having ask'd the Fellows if they would now submit to the Bishop of *Oxon* as their Pre-

Register.

President, they desired time, and their Lordships gave them till the Afternoon to consider of it, and the Court ordered them to give in an Account of what Gifts, or Provisions were made by the Statutes for poor Travellers, &c. to Morrow Morning. Then the Lords demanded of them, if they had Elected or Admitted any Members since the Kings Inhibition, to which they reply'd, that they had Admitted none but Mr. *Holden* who was Fellow Elect before, and his Year of Probationship Expired, and if he had not then been Admitted he must have stood Expelled by their Statutes. Then adjourned till two in the Afternoon.

TUESDAY Afternoon.

THE Fellows being called in, the Question was again put to them, whether they would submit to the Bishop of *Oxon* as their President, to which they gave in an Answer in Writing as followeth.

§. 12.
Register.

WHEREAS His Majesty has been pleased by His Royal Authority, to cause the Right Reverend Father in God *Samuel* Lord Bishop of *Oxon* to be Installed President of this College, we whose Names are hereunto Subscribed do submit as far as is Lawful and agreeable to the Statutes of the said College.

The Submission of the Fellows.

This Clause was Equivocal.

Alex. Pudsey.

Tho. Bayley.

Tho. Stafford.

Charles Hawley.

Rob. Almont.

Mainwaring Hammond.

John Rogers.

Hen. Dobson.

Ja. Bayley.

Jo. Davys.

M

Fran.

Fran. Bagshaw.
Joseph Harwar.
Geo. Hunt.
Tho. Bateman.
Willi. Craddock.

Jo. Gilman.
Geo. Fulham.
Hen. Holden.
Steph. Weekes.
Charles Penyston.

Dr. John Smith gave in a Paper Writ and Signed by himself in the same words.

Dr. Thomas Smith gave in his Paper of submission as followeth in §. 14.

The Demys subscribed a Paper in the same Form whose Names are.

Tho. Holt Senior.
Samuel Cripps.
Sam. Jenifar.
Rich. Adams.
Rob. Standard.
Rich. Vessey.
Charles Goreing.
John Brabourn.
Geo. Stonehouse.
Lawrence Hyde.
Geo. Woodward.
Charles Alleyn.
Willi. Fulham.
Rich. Watkins.

Dan. Stacy.
Willi. Sherwin.
Jo. Renton.
Maximilian Busb.
Ben. Gardiner.
Tho. Welles.
Willi. Bayley.
Tho. Higgains.
Jo. Cross.
Tho. Hanson.
Hen. Levett.
Harington Bagshaw.
Benjamin Mander.

The Chaplains subscribed the like, whose Names were.

Tho. Mander.
Hen. Holyoake.

Tho. Brown.
Fran. Haslewood.

The

The Choristers subscribed the like, whose Names were.

Sam. Broadhurst.

Charles Wotton.

Tho. Price.

John Bowyer.

Tho. Turner.

John Shuttleworth.

Edward Slack.

Willi. Inns.

Miles Stanton.

Richard Wood.

Rob. Wordsworth.

Joseph Stubbs.

The Clerks subscribed the like submission, whose Names are.

Stephen Nicols.

Charles Morgan.

John Smith.

Willi. Leadford.

Willi. Harris.

Tho. Ryley.

Jo. Russell.

Tho. Williams.

The under Porter of the College would give in no Paper of submission.

The *Oxford Relation* saith, that to the submission, the Clause was added, *and no ways prejudicial to the Right of Dr. Hough.* In the Original Paper I found

Oxford Relation.

Page 31.

it scored out, and as the Relation saith, it was yielded to by the subscribers, because the Lord Chief Justice and Barron *Jenner* as Judges declared that it was insignificant, since nothing they should do could invalidate *Dr. Hough's* Title, but left them still at liberty to be Witnesses for him or any other way serviceable to him in the Recovery of his Right, upon which assurance the Society * was prevailed with to leave it out.

* If this be as related, it shews the great condescension of the Lords Commissioners to have won them to obedience.

§. 13.
Out of the
Register *Obo.*
25th. 1687.
(a) His words
were, under
Correction I
do not.
(b) His words
were, I will
not, nor can-
not, because
he is not my
Legal Presi-
dent.

The Lords askt Dr. *Fairfax* if he owned their Jurisdiction, to which he reply'd, (a) that he did not; then he was askt if he would submit to the Bishop of *Oxon* as President, to which he refused to do: (b) And the Sentence was pronounced against him, That whereas he had denyed the Authority of the Court, and in Contempt of the Sentence of Suspension given against him by the Lords Commissioners at *Whitehall*, taken his Commons and Battled in the College as a Fellow of the College notwithstanding his said Suspension, the Court proceeded to deprive him of his Fellowship, and Ordered his Name to be struck out of the Buttry-Book.

The Sentence pronounced against him, I find in the Register, tho' not in this place, in the words following.

By His Majesties Commissioners, &c.

WHereas in our Visitation of the said College it appeareth unto us, that *Henry Fairfax* Doctor in Divinity one of the Fellows of the said College has been guilty of Dis-obedience to His Majesties Commands, and obstinately contemned his Royal Authority, and doth still persist in the same, we have thought fit upon mature consideration thereof to Declare, Pronounce and Decree, that the said Dr. *Henry Fairfax* be Expelled and Deprived of his said Fellowship, and accordingly we do hereby deprive him and Expel him from the same. Given under our Seal the 25th. day of *October* 1687.

Then the Lords issued the following Order.

B,

By His Majesties Commissioners, &c.

WHereas we have thought fit to Deprive and Expell Dr. *Henry Fairfax* from his Fellowship in the said College, you and either of you are hereby required to cause our said Sentence and Decree, a Copy whereof is hereto annexed, to be affixed on the Gate of the said College, to the end that due notice may be taken of the same, and of the due Execution hereof you are to certifie us. Given under our Seal the 25th. of *October* 1687.

To Thomas Atterbury and Robert Eddows.
Or either of them.

He then gave in his Protestation against their Proceedings, which the Court over-ruled and ordered him to depart and quit his Lodgings in the College in Fourteen Days.

Then the Doctor prevailed with much ado, saith the *Oxford Relation*, to Read the following Protestation and left it in Court which was as followeth.

I *Henry Fairfax*, Fellow of *St. Mary Magdalen College*, do under my former Answer heretofore made, and to the Intent it may appear that I have not consented, nor agreed to any thing done against me to my prejudice, I protest that this Sentence given here against me, is *Lex nulla*, and so far forth as it shall appear to be *aliqua*; I do say it is *iniqua & injusta*, and that therefore I do from it, as *iniqua & injusta*, appeal to our Sovereign Lord the King in his Courts of

Dr. Fairfax's
Protestation.

of Justice as the Laws Statutes and Ordinances of this Realm will permit in that behalf.

Henry Fairfax.

§. 14^r
The under
Porter de-
prived.

Then the Lords askt *Robert Gardiner* the Under Porter if he would submit to the Bishop of *Oxon* as President of the College, which he refusing to do the Lords deprived him of his Office, and adjourned the Court till the next Morning.

This Paper
is mis- placed
and should
have been
October 22d.
Afternoon.

Mr. *John Gilman's* Paper I find thus---That the Statutes of the College, to which I am positively Sworn, are the only Rule of my Actions and Obedience, in this and all other Cases of the like Nature, and I conceive the Bishop of *Oxon* has not those Statutable Qualifications which are required, therefore I cannot Assist at the Admission of the Bishop of *Oxon*.

Dr. Tho. Smith's
submission,
which he gave
in when the
Fellows gave
in theirs,
I have put
here by it self
because I
would not
mix it with
the other.

The subraission of *Dr. Thomas Smith* was as followeth, given in in Writing also,

MY LORDS,

I Own from my Heart and acknowledge the Kings Supremacy. I do now and will always pay all Dutiful, Just, and Humble Obedience to His Majesties Authority, as becomes a Priest of the Catholic and Apostolic Church of *England* Establish'd by Law. I make no exception to the Legality of your Lordships Commission, nor to the exercise of it in this present Visitation.

I am ready and willing to obey, in *licitis & honestis* the President whom the King has pleased to Constitute President when ever he shall come and preside in the College.

Thomas Smith, D. D.

The Paper given in by Mr. *Craddock* was as followeth.

A Bout Six Years since, when I was made Fellow by the Kings Permission, I took an Oath, that I would not be dispensed with from my Local Statutes, by which Statutes and Oaths it does not belong to me to Admit any Man President, besides I conceive Dr. *Hough* cannot be Legally dispossessed of the Presidentship of *Magdalen* College, till he has Appealed to *Westminster*, or an Higher Court, and till then I shall not cease my obedience to him.

This Paper was given in October 22d. Afternoon.

Willi. Craddock.

I shall now insert the Lords Commissioners Answer to my Lord Presidents last Letter, and then proceed in the Narrative.

Oxon the 25th. October 1687.

MY LORD,

IN Obedience to your Lordship of the 23d. Instant, and the Kings Letters Mandatory, we have this day Installed the Lord Bishop of *Oxon's* Proxy, by placing him in the Presidents Seat in the

§. 15. The Answer to the Lord Presidents Letter of the 23d. of October.

Chap.

Chappel, and some while after Dr. *Hough* having left the College, and the Keys being deny'd us, we caused the Doors of the Lodgings to be broken up, and gave his Proxy Possession thereof.

My Lord we proceeded to examin the Fellows concerning their submission to the Lord Bishop of *Oxon* now their President, their Answers were Unanimous *in scriptis*, that they would all submit but Dr. *Fairfax*, whom, for that, and denying the Jurisdiction of the Court, and Contempt of his former Sentence of Suspension, we have Deprived and Ejected, and one *Robert Gardiner* a Porter, all the rest of the College we left this Night in good temper, and the Bishops Servants in quiet Possession. We have likewise looked into the Constitutions, Orders, and Statutes of the College, and cannot find any of the Society to have offended therein, or in mis-applying their Revenues. They having given us, as we conceive, a clear Answer to the Accusation against them for Imbezling such a part of it, as was pretended to be set aside for Pilgrims, and poor Travellers, which we will bring up, and transmit to your Lordship:

* Here may be noted how tender the Lords Commissioners were and willing to have won them to obedience.

* And this we must say my Lord, that generally they have behaved themselves with great regard, and deference to His Majesties Command, saving in that particular whereof we gave your Lordship an account in our last, and even for that they have expressed a very hearty sorrow, and submission, and we do humbly conceive that the Bishop of *Oxon*, when he comes in Person to the College (which he promises suddenly to do so soon as his health will give him leave) will be best able to find out those faults of the particular Members of this Society, which we cannot get any the least Information of, and have sufficient

sufficient Power to redress them, and to punish the Delinquents; for the Irregularities Committed by the Statutes of the same, and having brought the Fellows to the Submission to his Admission, and had notice from your Lordship of the Kings Gracious pleasure, that no punishment should be inflicted upon them by us, upon the account of their former disobedience, we hope we have hitherto obeyed His Majesties Command, and that if he have no further pleasure to signify to us, we may have his Gracious leave to return to attend his Service at *London*. We crave leave further to intimate to His Majesty, that the Vice-Chancellor and Heads of Houses pay great respect to this Commission, as will in part appear by the Inclosed Paper of the *Programma*. And so begging your Lordships favourable Representation of our Duty and Service to His Majesty we rest.

This Graciousness of the King is to be observed.

See the *Programma* before cap. 2. sect. 1. §. 5.

MY LORD,
*Your Lordships most obedient
and humble Servants.*

Tho. Cestriensis.
R. Wright.
Tho. Jenner.

With this Letter was sent the following account, which in several particulars I have only given the abridgment of, as being less necessary to the main business.

N

Wednesday

Wednesday the 26th. October 1687.

§. 16.
The Account
the Fellows
gave in, con-
cerning their
Hospitality,
&c.

Here may be
noted that
the Lands of
this Hospital
were alienat-
ed.

THE Fellows of the College brought in an Account of their Gifts towards Hospitality, and then the Court adjourned till *Thursday* Morning, the abridgement of the Account is this.

In the time of King *Henry* the Sixth, the Hospital of *St. John* was dissolved and the Lands thereunto belonging were purchased by *William Wainfleet*, then Bishop of *Winton*, and in the place or scite of that Hospital he built *Magdalen* College. He himself left no Composition, Injunction, Statute, Order, or Proviso for the Maintenance of any Poor People, or Strangers, that ever we could find in any writing or Record whatsoever.

Then they relate some small Gift of *John Claimond* the third President who left 3 *l. per Annum* whereof 2 *l. 10 s.* is to be distributed amongst the Fellows and Scholars, on the first *Munday* in Lent Yearly, and 10 *s.* thereof for the repairing of four Beds and Bedsteads which he placed in a Room over the Vault of the old Chappel, but he made no provision they find of Victuals, or Maintenance of those who were allowed to Lodge there, which, at the most, were to be but four at a time. But in the time of the Rebellion the said Chappel, with the Vault, was made no other use of but to lay Fuel in, whereupon at the Restauration the Visitor directed, that it should be Converted into Chambers for the use of the Fellows and Demys.

Two other of their Benefactors, *Ingledeue* and *Preson*, ordered 20 *d.* at a time, to be disposed of on fourteen Feasts to the poor, the whole amounting
to

to 1*l.* 3*s.* which is accordingly distributed yearly by the Burfers: *Preston* gave 6*s.* *per Annum* for the use of two or three poor *Lancashire* Scholars, which is yearly distributed by the President, so that all the Money which we are obliged to bestow on Charitable uses amounts to but 2*l.* 3*s.* 4*d.* *per Annum* besides *Perrots* Composition which is faithfully performed.

Notwithstanding which, 4*s.* is given yearly to the Castle for Straw for the Prisoners, and we allow 8*s.* yearly to the Alms-Men of *Bartholomews*, we allow 6*l.* 6*s.* 8*d.* yearly to the poor of *Bridewell*, and 20*l.* *per Annum* to the President, for the entertainment of Strangers, and Forreigners, and there is allowed every Meal at the Burfers Table a Commons for the Entertainment of Strangers, and the Burfers have Power to add thereunto as they see occasion, and besides what is constantly allowed, as abovesaid, there is a considerable Sum disposed of yearly, by the President and Thirteen Senior Fellows, at the conclusion of the Accounts and other times, to Indigent Persons, Strangers, and Travelors, and chiefly to such as are in great want, but ashamed to make their necessities so public, as to desire Alms of their respective Parishes amounting to above 50*l.* *per Annum*.

And if we might not be thought to boast of our Charity, we could instance in considerable Sums given to the Fire of *London*, *Northampton*, and *Southwark*, and other places, and to the French Protestants, to one of which we allow at present 6*l.* yearly, whence it appears, that we Expend out of the College Stock near 100*l.* *per Annum* in Charitable uses.

Alex. Pudsey.
 Tho. Smith.
 Tho. Bayly.
 Ma'n. Hammond.
 Jo. Rogers.
 Rob. Almont.
 Fran. Bagshaw.
 Hen. Holden.
 Hen. Dobson.
 Geo. Fulham.
 Charles Penniston.

Willi. Craddock.
 Tho. Stafford.
 Charles Hawley.
 John Bayley.
 John Harwar.
 John Davys.
 Tho. Bateman.
 Geo. Hunt.
 Jo. Gilman.
 Rob. Charnock.
 Steph. Weekes.

Dr. Thomas Smith gave in the following Paper at the same time.

§. 17.
 Dr. Thomas
 Smiths Paper
 about the Col-
 lege Charity,
 &c.

AS to your Lordships Question proposed, whether we have applyed the Revenue of any Land, or other Estate, given for Hospitality, to private uses, we cannot for want of time give your Lordships that satisfaction, and full Accompt which we desire, and shall do hereafter when we shall look over the Evidences and the Estate of the College, of which we are but the Ufu-fructuaries, and other Muniments locked up in the Tower.

As to our Hospitality in General, the Bursers Table is the place where not only our Tenants, but Strangers, according to their Quality are Entertained, there being a dayly Allowance made by the College for that purpose, which when scanty, and not sufficient for a suitable Entertainment, it is left in many Cases to the discretion of the Bursers to add what they shall Judge fit and becoming. But besides this it is our constant Practice and Custom at the end of the

the Year to give Sums of Money away to the poor, which are greater, or less, according to the Surplusage of our Corn Rents that year.

Thirdly, The Bursers are Impowered to give Money away to the poor, upon the greater and more solemn Festivals of the year. Fourthly, Oftentimes upon great Emergencies, such as were the Brief for the Re-edifying the Town of *Northampton*, for the Re-building the Cathedral of *St. Pauls London*, for the relief of the French Protestants, besides other Briefs for Fires and for Redemption of Captives, and the like, we give considerable Sums of Money, as well out of the public Stock, as out of our private Pur-ses.

As for turning the remaining part of the Hospital of *St. John*, about twenty Years since, into Lodging Chambers, which were very much wanting for the Fellows, that alteration was not made without consulting the Bishop of *Winton* our Local Visitor, and without having obtained his Lordships consent. There having been no use as we could ever learn from our Predecessors of those Rooms, and as we may seem, not without good grounds, to believe, since the Time that Pilgrimages were left off, and dis-used here in *England*.

But my Lords, if upon re-search (which we will endeavor to make with all honest diligence) we shall find any obligation lying upon us, to use larger measures of Hospitality, we assure your Lordships we will be just to that obligation, and for the future will fully satisfy it as we will any other point of Duty which is Incumbent upon us as Fellows of the College.

This

This we hope will satisfie your Lordships at present, and we humbly desire of your Lordships to make, as we are assured your Lordships will do, a fair and Candid Interpretation of this Answer to his Sacred Majesty, whom God blefs with long Life and an happy and glorious Reign.

Tho. Smith, D. D.

THURSDAY Morning the 27th. Octob. 1687.

§. 18.
The Stewards
account Re-
gister.

THe Steward Mr. *James Almont*, according to the Lords Order, brought in an account in Writing of the Leases Lett, and Fines taken for the two last years.

Then the Fellows desired, that Dr. *Alamorth* their Vice-President his Suspension might be taken off, his presence being so necessary at their Audit which was nigh at hand.

To which the Court reply'd, that they must apply to the Lords Commissioners above, who had Suspended him. Then adjourned till Five in the Afternoon, at which time they met and adjourned till the next day at Seven in the Morning, before which Meeting the following Letter was delivered to the Lords.

Whitehall Octob. 27th. 1687.

§. 19.
The Lord
Presidents
Letter to the
Lords Com-
missioners, in
Answer to
theirs of the
25th. of Octob.

MY LORDS,

I Have received your Lordships of the 25th. and laid it before the King, who Commands me to tell you, that he thinks the Fellows, who have submitted to the Bishop of *Oxford* as their President, ought

ought to make an Address to His Majesty, asking Pardon for their late Offences and obstinacy, and acknowledging the Jurisdiction of the Court, and the Justice and Legality of it's proceedings in the whole matter: His Majesty leaves the Wording of it to you, and the manner of doing it, but would have it done before you come away; And if any Person shall refuse to joyn herein, His Majesty would have you Expel them, since he cannot look upon this which is called a Submission to be such indeed, unless it be attended with these Circumstances.

The King is very well satisfied with the proceedings against Dr. *Hough* and Dr. *Fairfax*, but thinks they deserve some further punishment, and therefore when you return will have the whole Ecclesiastical Commission pass a Sentence of Incapacity upon them.

The King would have you before you come away, place Mr. *Willi. Joyner* in the Fellowship lately enjoyed by Dr. *Fairfax*, and likewise appoint Judge *Allibons* Brother, and Mr. *Charles Goring* to be Fellows of that College if there are two Vacancies more. If there is but one, then Judge *Allibons* Brother to have that Fellowship, and Mr. *Goring* to come in upon the first Vacancy. In case Mr. *Goring* be a Fellow, His Majesty would have Mr. *Middleton*, who is his Nephew succeed him in his Demyship.

By this it appears that the Fellows submission was expected.

I am,

MT LORDS,

Your Lordships most
humble Servant.

Sunderland. P.

FRI.

FRIDAY Morning the 28th. of Octob. 1687.

§. 20.

THe Lords, in order to fill up the void places, demanded of the Fellows how many places were Vacant, and it appeared to their Lordships that there was none but Dr. *Fairfax's* and Mr. *Ludfords* who was lately Dead, then enquiry was made for the Persons recommended, and no body appearing the Lords could proceed no further in that matter.

Then the Lords told the Fellows, &c. That they could not heartily recommend them to His Majesties favour, unless they did Address to His Majesty in Writing, asking pardon for their offences, and acknowledge the Jurisdiction of this Court.

[The Fellows making a little pause the Bishop of *Chester* told them they might word it themselves, or if they thought fit Mr. *Tucker* should Assist them in a Form.] Upon which the Fellows withdrew into the Hall to consider of it, and after some time brought in a Paper with all their hands subscribed of the Tenor following.

May it please your Lordships.

§. 21.

By this it appears how far they were from making a submission according to his Majesties expectation.

WE have endeavored in all our Actions to express our selves with all humility to His Majesty, and being conscious to our selves, that in the whole Conduct of this business before your Lordships, we have done nothing but what our Oaths, and Statutes Indispensably obliged us to, we cannot make any Declaration whereby we acknowledge that we have done amiss, as having acted according

ing to the principles of Loyalty and obedience to his Sacred Majesty as far as we could without doing violence to our Consciences or prejudice to our Rights (one of which we humbly conceive that of Electing a President to be) from which we are Sworn upon no account whatsoever to depart. We therefore humbly beg your Lordships to represent this favourably with our utmost Duty to His Majesty, whom God Grant long and happily to Reign over us.

Signed.

Alexander Pudsey.

Tho. Bayley.

Tho. Stafford.

Charles Hawley.

Rob. Almont.

Main. Hammond.

John Rogers.

Ja. Bayley.

Hen. Dobson.

Jo. Davy.

Fran. Bagshaw.

Jos. Harwar.

Geo. Hunt.

Jo. Gilman.

Tho. Bateman.

Willi. Craddock.

Geo. Fulham.

Hen. Holden.

Steph. Weekes.

Charles Penniston.

This being Read and the Court, saith the Register, looking upon the same to contradict the submission they had given in before, the Lords again asked them, whether they would submit to the Bishop of *Oxon* as their President or not.

Dr. Pudsey, Dr. Stafford, Mr. Hollis and Mr. Penniston, referred to their Paper of submission given in on *Tuesday*, and the greatest part of the rest desired to be excused from answering the Question, declaring that their obedience or disobedience would best appear by their actions, when the Bishop came
O
amongst

Register.

amongst them, and if they were disobedient to the President, they were lyable to be punished by their Statutes, and said further, that they having given in their submission on *Tuesday*, they thought their Lordships Honor was engaged to require nothing further from them. But the Court insisting to have a positive Answer to the Question, and the Bishop of *Chester* saying, it was *Protestatio contra factum*; Dr. Bayley, Mr. Hammond, Mr. Dobson, Mr. Bayley, Mr. Bagshaw, Mr. Harwar, Mr. Bateman, Mr. Craddock, Mr. Gilman, Mr. Holden, Mr. Weeks, and Mr. George Fulham positively refused.

The Oxford Relation gives this account of the Discourses following.

§. 23. *Oxford Relation.*

UPON their Lordships perusing the Paper, they expressed their dislike of it, and said it did not come up to what they delivered on *Tuesday*.

Dr. Bayley answered, they had acted conformable to themselves, and truly he could not confess any Crime. To which the Bishop of *Chester* reply'd, that they did not expect of them to Confess a Capital Crime; only to make some acknowledgment. To which Mr. Fulham said, My Lords, we were ordered to Address our selves as having acted in Contempt of His Majesties Authority, which he looked upon as so great a Crime, that upon no account he would be guilty of; My Lords continued he, I did obey His Majesty as far as I could to the utmost of my Power, and your Lordships having been pleased to accept the submission on *Tuesday*, I humbly conceive your Lordships are engaged that nothing further be required of me of what I have done, being Conscious

This is according to the original, the *Oxford Relation* varying in words tho not in Sense.

of

of no Contempt to His Majesties Authority. To which the Bishop of *Chester* Answered, you are a very forward Speaker and abound in your own Sense. Mr. *Fulham* reply'd, he hoped their Lordships would give them leave to speak, when their Fortunes were so considerably at Stake, as their own Relatoin saith.

Then Dr. *Bayley* desired their Lordships to give him leave to explain what he meant by the word submit, in his Answer on *Tuesday*, viz. The word *Submit*, was to be understood with reference to the King, and that he did not intend it as a submission to the Bishop as Lawful President.

By this it appears how necessary it was to have a more clear and full submission subscribed.

§. 23.

Upon this a fresh Question was put to the Fellows, whether they would obey the Bishop of *Oxon* as their President in *licitis & honestis*, to which all, except one or two, Answered they would not. Upon this Question put to Mr. *Fulham* he Answered, that he could not confess any Crime or Offence done against the King; that Dr. *Hough* having been Duly Elected and Admitted President he thereby obtained a Right, which he was not satisfied that he had any ways forfeited, therefore he could obey no other Person as President. The Bishop of *Chester* asked him if he would obey the Bishop of *Oxon* as in Possession, to which according to the Relation of those who Writ down what he spoke in Court, he thus Answered, that he could not submit otherwise then as it was agreeable to the Law of the Land and Statutes of the College, without prejudice to the Right of the Election of the Fellows, and that he humbly conceived the Bishop was violently and unjustly put into Possession, and that it should have been by the *Posse Comitatus*.

The Oxford Relation palliates this Answer.

Not as the
Oxford Relation hath it,
that their Oxford Law was
no better then
their Oxford Divinity.

Then my Lord Chief Justice said, that their *Oxford* Divinity was better than their *Oxford* Law: If they had a mind to a *Posse Comitatus* they might have it soon enough: to which Mr. *Fulham* said, he intended nothing but respect to their Lordships, and had endeavored to speak and behave himself with due Reverence, and desired their Lordships would put a favourable construction of what he said, as the *Oxford* Relation saith.

The Sentence
of Suspension
against Mr.
George Fulham.

Then all were Commanded to withdraw, and the Buttry-Book called for, after which Mr. *Fulham* was called in with the rest, and the Bishop of *Chester* said to him, Mr. *George Fulham*, whereas you have openly, and in Opprobrious Language, Contemned the Authority of the Court, we Suspend you from the profits of the Fellowship, during the Kings pleasure, and you are accordingly Suspended; of which all the Fellows and other Members of this College are Commanded to take notice: and to the rest his Lordship further said; whereas there are several Fellows absent who are in Contempt of His Majesty, that they may not suffer for want of greater notice then they have yet had, we do direct and order you, who are Fellows now present to give them notice by the usual Methods, and to take notice your selves, that we have adjourned this Court till *Wednesday* the 16th. of *November* ensuing, to be held at this place at Nine in the Morning.

SECT:

S E C T. II.

The Second Visitation, by Adjournments, of St. Mary Magdalens College, by the Lords Commissioners.

THE Lords Commissioners, having in this Interval of time Communicated their Proceedings to His Majesty, and by his appointment to the rest of the Lords Commissioners at *Whitehall*; The three Lords Commissioners Visitors took their Journey to *Oxford*, where upon the 15th. of November they arrived,

§. 1.

WEDNESDAY the 16th. of November 1687.
At Nine of the Clock in the Morning.

Proclamation being made, the Statute-Book and Buttry-Book were Ordered to be brought in, Then Mr. *William Joyner* and Mr. *Job Allibon* were called, and the Mandate for their Election was Ordered to be Read, which followeth.

JAMES R.

RIGHT Reverend Father in God, Right Trusty and Well-beloved, and Trusty and Well-beloved, We Greet you well: Being Informed, that there are two Fellowships now Vacant in *St. Mary Magdalen College*, by the Expulsion of Dr. *Fairfax*, and the Death of *Thomas Ludford*, and having received

The Kings
Mandate for
Mr. *Willi.*
Foyner and
Mr. *Job Ali-*
bon.

ceived a good Character of the Learning and Sobriety of Our Trusty and Well-beloved *William Joyner* and *Job Allibon*, We have thought fit hereby to Authorize and require you forthwith to Admit the said *William Joyner* and *Job Allibon* into the Fellowships lately enjoyed by the said *Dr. Fairfax* and *Tho. Ludford*, with all the Rights, Privileges and Profits, Perquisites, Emoluments and Advantages whatsoever thereunto belonging, without Administrating any Oaths to them but that of a Fellow: Any Law, Statute, Custom or Constitution to the contrary notwithstanding; with all which We are pleased to Dispense in this behalf, and for so doing this shall be your Warrant. And so We bid you heartily farewell. Given at Our Court at *Whitehall* the 11th. Day of *November* 1687. In the Third Year of Our Reign.

By His Majesties Command.

Sunderland P.

Register.

This being done, the said *Mr. Joyner* and *Mr. Allibon* were Admitted Fellows of the said College, taking only the Oath required by their Statute-Book to be taken at the Admission of a Fellow, and their Names were Entred into the Buttry-Book.

Then the Fellows were called in, except those hereafter to be mentioned, and *Dr. Younger*, who was excused, being in waiting upon her Royal Highness the Princess of *Denmark*, several Certificates were produced to excuse *Mr. Charles Hawles*, *Mr. Edward Maynard*, *Mr. John Hicks*, *Mr. Thomas Goodwin*, *Mr. Francis Smith*, *Mr. Robert Holt*, and *Mr. Robert Thornton*.

The

The Fellows being thus Convened the Lord Bishop of *Chester* made this following Speech.

§. 2.

GENTLEMEN,

Your *Undutiful*, and I might say, your *Ingrateful* behavior towards His Majesty, for Six Months last past, your obstinate froward and *unreasonable stiffness* to so good and Gracious a Prince, was that which brought this *present Visitation* upon you; which how great a *sin* it was against God (whose *Vicegerent* you have contemned beyond all Moderation and Reason,) how great a *scandal* to our Religion, how great a *stain* to the liberal and ingenuous Education, which this Society would afford you, and how very *mischievous* it will be to your selves at last, I endeavored to convince you at the *first Opening* of our Commission. Since which time some of you have been so *unreasonably inconsiderate and obstinate*, as to run yet farther upon the score of His *Royal Patience and Pardon*, for which you are now to receive the *just and necessary Animadversions* of this Court, that the Honor and *Authority* of the King may be Vindicated, and the *Peace* of Church and State not be endangered by your *Impunity*, or our *Connivance*, at this your petulant humor and *contumacious* behavior.

The Lord
Bishop of
Chester's Speech.

No Subjects can be wise or safe, but they who are so sincerely honest, as to take all fair occasions of doing their Prince acceptable services and executing his Will: Reputation abroad and Reverence at home, are the Pillars of safety and Sovereignty, these you have endeavored as much as in you lies to *shake*, nor can the King hope to be well served at home, or
observed

observed abroad, if your punishment, be not as public as your Crimes.

No Society of Men in this or the other University ever had so many *Male-contents* and *Mutineers* in it, as this College: your continual *clashings* and discords, sometimes with your President, at others with your *Visitor*, and so frequently among your selves, ever since his late *Majesties* happy *Restoration* have been too public to be concealed. I have more than once heard your late Visitor of Pious Memory, bewaile the great unhappiness of this Noble Foundation, in being over-stockt with a sort of Men whom a *wantonness* of Spirit had made restless and *unquiet*, who would never be satisfied, whose disease was fed by *Concession*, and then most violent, when they knew not what they would have. You have been long experienced in the Methods of Quarreling with your *Visitor*, *President* and your selves, and by these steps you are at last arrived to the top and *highest degree of insolence*, which is to Quarrel with your Prince, which as it dishonors your Religion, so it Proclaims your *Pride and Vanity*, for every disobedient Man is proud, and would obey, if he did not think himself wiser than his Governor. You have dealt with His Sacred Majesty, as if he *Reigned only by Courtse*, and you were resolved to have a *King under you*, but none over you; and till God give you more *self denial and humility*, you will never approve your selves to be good *Christians*, or good *Subjects*, whose *Patience* and *Petitions* are the only Arms they can ever honestly use against their Prince.

You could not be ignorant of the Kings being your Supreme Ordinary by the Antient Common Law of this Land, of which the *Statutes* are not *Introductory* but

but declaratory; you have Read what *Bracton* says de leg. lib. 1. c. 8. v. 5. (who was Lord Chief Justice of England for Twenty Years in *Henry the Thirds* time) *Nemo de factis suis presumat disquirere, multò minus contra factum suum venire.* Now His Majesty the Fifth of *April* sent his Letters Mandatory to you to Elect and Admit one Mr. *Farmer* into your Presidents placethen void by the Death of Dr. *Clark* your last President. Whom the Tenth of *April* you represented to His Majesty as *incapable of that Character in several respects*, and besought him (as His Majesty should think fittest in His Princely Wisdom) *either to leave you to the discharge of your Duty and Consciences according to his late Gracious Declaration, and your Founders Statutes, or to recommend such a person who might be more serviceable to His Majesty and the College.* This Paper was delivered to my Lord President the Tenth of *April*, and on the Fifteenth of *April* without expecting His Majesties Answer (as your Hypocritical submission would have persuaded all Charitable Men to believe, you did and would expect) in Contempt of his former Mandate, which had the force of an Inhibition, you proceeded to Elect Dr. *Hough* for your pretended President. Upon the first notice whereof, the Sixteenth of *April* my Lord President sent a Letter by His Majesties Command to the Bishop of *Winchester*, not to Admit him. But they who have ill designs in their Heads, are always in haste, by which you surprized your Visitor, which occasioned my Lord President the 21st of *April* to Write another to you, to let you know how much the King was surprized at your Proceedings, and that he expected an Account of it. Then were you Cited before the Ecclesiastical Commis-

sioners at *Whitehall*, where upon mature deliberation
 and a Consultation had with the best Common Lawyers
 and Civilians, Dr. Houghs Election was declared void,
 the 22d. of June, and he remov'd from the same by
 their Lordships just Sentence. Of this you were
 certified by an Instrument under the Seal of the Court
 of the same Date, affixed to your College Gates;
 which being disobeyed, you were once more Cited
 by an Instrument of the first, to appear before their
 Lordships the 29th. of July to Answer your Con-
 tempts. You pretended when you came before their
 Lordships, that you were deeply affected with the late
 Sense of His Majesties heavy dis-pleasure, and beg'd
 leave to prostrate your selves at His Royal Feet, of-
 fering all Real Testimonies of Duty and Loyalty, as
 Men that abhorr'd all stubborn and groundless resist-
 ance of His Royal Will and Pleasure. So said, and so
 done, had been well, but you were resolv'd it seems
 to give him nothing but good words, and that your
 Practice should confute your Profession. I wish
 you had known in time as well (as you pretended
 to do) how entirely your welfare depended upon the
 Countenance and Favour of your Prince, it would
 then have been as great a grief to you to have dis-
 obeyed His Majesties Commands as it was a guilt,
 and will be a punishment, both in this Life and that
 to come, if not repented of in time. On the 14th. of
 August His Majesty signified His Will and Pleasure to
 you by His Letters Mandatory, and thereby Autho-
 rized and required you forthwith to Admit the Bi-
 shop of *Oxon* into the place of President, any Statute
 or Statutes, Custom or Constitution to the contrary
 notwithstanding, wherewith he was Graciously
 pleased to dispense, to which he expected your ready
 obedience.

obedience (but all in vain;) for to your shame be it spoken, you had done an ill action, and resolv'd to let your busie Wits on work to defend it. And Conscience (the old Rebellious Topick) must be call'd in at a dead lift to plead for you. But *you are not the first* who have *mistaken* an humor or a disease for Conscience; your scruples were not such, but that they might, *without sin*, have been *Sacrificed* to your Princes pleasure as a *Peace-offering to the Father of your Country*, to your Mother Church, and to the good of this and all other such Charitable Seminaries of good Learning and Religion, and Men as wise (as you perhaps may think your selves) will be of opinion, that they who are too Tall to stand, and too stubborn to bow deserve to be broke. One would have thought that His Majesties Patience after so many and great Provocations as these, should have made a way to your Hearts through your Brains, and made you ashamed of your obstinacy and in love with obedience before now. But you have deceived his and all good Mens expectations still. Infomuch, that *on Sunday the 4th. of September* His Majesty sent for you to Attend him at *Christ-Church*, and Commanded you to Admit the Bishop of *Oxon* your President without any further delay or pretence; you say it was to *Elect* him, which sounds like the rest of your Sophistry, for you well knew that *admission* would have satisfied him, for which you had his *Written Mandate lying by you*, which would have determined that Scruple. But the truth of it was, you *resolv'd* (as time the best Expofitor of Mens intentions has *discover'd*) to persist in your obstinacy, till you had convinced him and others, that you were none of the good *Centurions Servants*, for instead of complying with His Majesties Pleasure,

you went back to *your Chappel* (where you should have *learned and paid more Devotion*) and Signed a Paper containing a direct and disobedient refusal.

Which peevish carriage of yours to your Prince from one end to the other, is such a Composition of folly and frowardness as was little deserv'd by so good and Gracious a King. There ever went a *Miraculous Power of Conversion with his Royal Presence* where ever he came in his whole Progress *but here*, he convinced *all such* as he had discour'd with, of the Justice and equity of his Proceedings; *your selves excepted*, no body of Men ever departed unsatisfied from him, but that they departed from the blessing of enjoying his Royal presence no longer. And I must confess I do not see how it is possible to do any thing more in point of Honor, Conscience, Clemency, Justice and Royal Tenderness, for the preservation of *this Society and every Member of it*, than what *His Sacred Majesty hath already done* in spite of your Disobedience and Contumacy, and yet *he was and is still resolved* to continue his Princely Piety and Goodness to all those who shall no longer pretend to make it a sin against Conscience to return to their Obedience to him, and to those whom he has set in Lawful Authority over them, of which I gave you a full account at the first opening of our Commission on Friday the 21st. of October in your College Hall as you may well remember. On Saturday the 22^d. of October we required you to Admit and Instal my Lord of Oxon according to the Kings Mandate to you before directed, which all but three of you refused again to do, and gave your pretended Reasons for it in the Morning, and in the Afternoon Dr. Hough, tho' before Expelled, came in without leave, but not without Attendance and Follow-

ers. *unbecoming his Circumstances*, and Appealed from what we had done, or should do, as *illegal, Unjust and Null* (by word of Mouth, and not in Writing, nor with the decent *salvo's* of all other Appeals) which was applauded by a loud *Tumultuous and Insolent Hum*, to affect the Populacy to the espousing of your cause, for which *open breach of the Peace*, Dr. Hough was bound over to the Kings Bench, and if most of you had not been better pleased with that *Insolent behavior* than became you (and indeed Accessaries to it, if not Actors in it) you might and would have discovered the *Turbulent persons* who had been guilty of it.

On Tuesday the 25th of October, we our selves caused the Bishop to be Installed by his Proxy, and we then askt you, whether you would submit to the Bishop as your President now Installed by the Kings Mandate, *In licio & honestis*? To which all that were present (except Dr. Fairfax) gave in an Answer *in scriptis* in the Affirmative, and requested us to represent you as *Dutiful* to His Majesty in the highest degree: But from this good Resolution you quickly fell: for on Friday the 28th of October when we advised you to make an *humble submission* to His Majesty according to the *Nature of the Offence*, it had so ill an effect upon you, that after an hours consideration or more, you brought us down a Paper Signed by all but two or three of the Fellows then present, which seemed to us to be rather a protestation against your former *submission* than a begging of the Kings Pardon for your past offences: and that you might *clear your selves*, at least from any the least suspicion of that which lookt like *Repentance* or *Obedience*, you desired to withdraw or expound your Submission, which you made in writing the Tuesday before

fore, and to limit the word *submission* to the Kings Authority, telling us plainly, that you did not *nor could not* submit to the Bishop of Oxon as your Lawful President: With the *Insolent Justification* of your continued dis-obedience, we were *deeply affected and astonished*, and tho' we might then justly have Expelled you, yet we forbore and *went back to London* to acquaint His Majesty with your carriage, who *resented it according to your Demerits*. He who is too proud to ask God and the King Pardon, deserves neither. I am sure the best of us need both. I wish it had been in our Power to have persuaded you then, so to have moderated your selves, as to have *Sacrificed* the most *disingenuous Arts of Consention* to the safety and honor of the Christian Religion, and not to have *pursued your little scruples, and great Animosities* to the evident hazard at least of bringing a scandal on it.

I hope I have said enough to convince you, that the *Fig-leaves*, which you have stitched so Artificially together, will not *cover your Nakedness*: you pretend Conscience of your *Oaths*, among which that of *Allegiance and Supremacy* ought not to have been forgotten. But *partiality in Duty* is a great Symptom of Hypocrisie: You Dispense with your own Oaths your selves, and make too bold with some parts of your Founders Statutes, in which I have instanced, and could do in more, as in that wherein you are bound to be served *solum per Masculos*, for want of which we found some scandals to have been brought upon the College by Bastard Children, and will you not suffer the King *who alone hath Power to do it*, to give you a Dispensation in others? Can he who is so tender of his Honor put up such Indignities as these? And can we who are intrusted with the vindication of
it

it, suffer this to go unpunished? I wish you had half so much kindness and Charity for your selves, and so great a consideration of the happiness of this Foundation, as His Majesty and his Commissioners have already exprest in their dealings with it. The Justice and Equity whereof (if you do not) all good Men will Proclaim. I need not remind you of putting in some Papers under your hands, which would have been Aggravations of the former Contempts, which upon better thoughts you desired; and we gave you leave to withdraw. What other Men, who are led by Populacy (which is the *Fools Paradise*, but the *Wise Mans scorn*) say of us while we are doing our *Duty to God and the King*, we value no more than what they dream of us: For we set a greater estimate upon our own *Duty*, than *other Mens thoughts*, and will discharge our Consciences faithfully, whatsoever becomes of our *Credit*. We can allow those who are *disaffected* to the *Crown* and to the *Church of England*, to talk of us at their own Rate; we shall vindicate the Kings Authority, and redeem it from Contempt by all Just and Lawful means; But yet Gentlemen, the great concern we have for you, and our earnest design *to rescue* you out of danger (if you are not sturdily resolved to cast away your selves) obliges us to offer you once for all, that if you will *freely* and *presently* make such *submission* to His Sacred Majesty, as the *Heinousness* of your Offences do's in our *Judgment* require, we will pass by your faults, and recommend you heartily to Gods and the Kings Mercy, and accordingly we require the Deputy Register to Read the Form of such a submission to you, as the Court upon mature deliberation hath judged necessary for them to expect,

and

and require in Point of Justice as an expiation for all the former disobedience and contempts, of which they have found you guilty; which they that are willing and well resolved, may immediately Sign, and the rest of you are Commanded to withdraw, excepting Dr. Thomas Smith and Mr. Charnock, with whose good behaviour towards His Sacred Majesty, in the concern before mentioned, we declare our selves to be well satisfied, and doubt not, but that His Majesty will be so too, when we shall have further occasion to represent it to him.

§. 3.
Register.

After the Bishops Speech all were ordered to withdraw, except the Fellows, and the Form of a Submission was ordered to be Read to them, in the words following.

To the Kings Most Excellent Majesty.

The Humble Petition and Submission of the Fellows of St. Mary Magdalen College in the University of Oxford, whose Names are Subscribed.

May it please your Majesty,

WE your Majesties most humble Petitioners, having a deep sense of being justly fallen under your Majesties displeasure, for our disobedience and contempt to your Majesty, and to the Authority of your Majesties Commissioners and Visitors; We do in all humility prostrate our selves at your Majesties Feet, humbly begging your Pardon for our said Offences, and promising that we will for the future behave our selves more Dutifully, and for a Testimony thereof, we do acknowledge the Authority

rity of your Majesties said Visitors, and the Justice of their Proceedings, and we do declare our entire Submission to the Lord Bishop of *Oxon* as our President.

He then told them, that their Subscribing the same was the only means that could recommend them to His Majesties favour. But all the Fellows to whom the said submission was proposed * (being severally ask't the Question) peremptorily refused to subscribe. Mr: *Thompson* desired to be excused from subscribing, for that he had given his Vote for Mr. *Farmer*, and had not concurred with the Society in any thing they had done since in this business, and declared that he never had been disobedient nor ever would be, whereupon their Lordships excused him.

* Dr. *Thomas Smith* had not the Question proposed to him, having been absent from the College during the heat of the contest, and wholly unconcerned in it, by which it appears how false the *Oxford Relation*, p. 37. 38. is.

Dr. *Aldworth* desired, in the Name of himself and the Fellows, time to consider of the submission, and give their Answer in Writing, to whom the Bishop of *Chester* said, they must every one Sign or Refuse as they were called; And Baron *Jenner* said, there was no Answer to be given, but Yea or No: They all moved again for time, but it was denied; then Dr. *Aldworth* said, My Lords, this is my first appearance before your Lordships since your sitting here, therefore I pray to be heard.

§. 4.
The *Oxford Relation* is thus p. 37. 38.

My Lords, I am as ready to comply with the Kings Pleasure as any Man living, neither do I know that we have ever in this place been disobedient to the King, when ever 'twas in our Power to obey his Commands. Our Founder, in the first Clause of the Oath we take at the Election, hath provided,

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that

that no one shall be President of this College, but who was bred in this, or in the College wherein he himself was bred, now for us who have Elected Dr. *Hough*, a Person Qualified according to our Statutes, who hath been Installed, Sworn, Confirmed and Approved of in all the ways and manners prescribed in the Statutes: For us my Lord to accept and admit of a Stranger and a Forreigner in his place, is to the best of my understanding a giving up the Rights of the College to other uses than the Founder designed it — Here Dr. *Aldworth* was Interrupted by the Bishop of *Chester*, saying, the Statutes were overruled by the Kings Authority, or words to that effect. To which the Dr. Answered, your Lordships sit here as Visitors, which Implies there are certain Laws, and Statutes which we are bound to observe, and by which we are to be Governed, and if it shall appear to your Lordships, that we have Acted conformable to those Statutes, I hope we shall neither incur the Kings displeasure nor your Lordships; The whole Tenor of our Statutes run, that we should Inviolably maintain our Right, and observe the Rules of our Founder. He has laid his Curse upon us if we vary from them, here he repeated the words; *Ordinamus sub poena Anathematis & Indignationis Omnipotentis Dei ne quis, &c. Item sub Interminatione Divini Judicii Interdicimus.*

To which the Bishop of *Chester* reply'd, are you not to obey the King as well as your Founders Statutes? To this the Vice-President Answered, I never did obey the King, and never will do: our Statutes which we are Sworn to are Confirmed by several Kings and Queens before and since the Reformation, and as we keep them are agreeable to the Kings Laws both

both Ecclesiastical and Civil, and whilst we keep up to 'em we obey the King. The Bishop of *Chester* reply'd, the Statutes were never Confirmed by his present Majesty, to which Dr. *John Smith* said, neither have they been Repealed by His Majesty, and what is not Repealed is Confirmed; After this their Lordships pressing either to Sign or Refuse, Dr. *Aldworth* said, My Lords I'll deal plainly in regard to my Oath and the Statutes, to the Right of all our Successors and of Dr. *Hough*, whom I believe to be as fairly Elected * and as Legally Possessed as ever any since the Foundation of the College: I cannot submit to the Bishop of *Oxon* as President, so he was ordered to withdraw.

Whilst we live up to them, saith the Printed Relation.

The Mandate being an Inhibition repeals them for the present time by Dispensation.

* This was a bold Assertion and I hope to prove it as false.

After this, the same Question was put to all the Fellows singly, who all refused to Sign the submission except Dr. *Thomas Smith* and Mr. *Charnock*, who were not pressed having as their Lordships said behaved themselves Dutifully towards the King. Mr. *Thompson* desired to be excused from subscribing, for that he had given his Vote for Mr. *Farmer*, and had not concurred with the Society in any thing they had done since in this business, and declared he never had been disobedient nor ever would be. Then their Lordships produced a Petition sent to the Earl of *Sunderland* upon the report of the Kings Mandate for Mr. *Farmer*, which he had Signed, therefore pressed further his subscribing the submission. This he owned, but said, it was before the Kings Mandate was produced, but after it was shewn at the Election he Voted for Mr. *Farmer* in obedience to the Kings Command, and promised to obey the Bishop of *Oxford*, whereupon their Lordships excused him.

Then the Lords called for the Buttry-Book and caused all the Names of those Fellows, who refused to subscribe, to be struck out, and the Fellows so struck out being called in, the Sentence of Expulsion was Read to them in this Form.

By His Majesties Commissioners for Ecclesiastical Causes and for Visiting of the Universities, and all Cathedrals, and Collegiate Churches, Colleges, Grammar-Schools, Hospitals, and other the like Corporations or Foundations and Societies, and particularly impowered to Visit Magdalen College in the University of Oxford.

Whereas in our Visitation of the said College, it appeared to us, that Dr. Charles Aldworth, Dr. Alexander Pudsey, Dr. John Smith, Dr. Thomas Bayley, Dr. Thomas Stafford, Mr. Robert Almond, Mr. Mainwaring Hammond, Mr. John Rogers, Mr. Richard Strickland, Mr. Henry Dobson, Mr. James Bayley, Mr. John Davies, Mr. Francis Bagshaw, Mr. James Fayrer, Mr. Joseph Harwar, Mr. Thomas Bateman, Mr. George Hunt, Mr. William Cradock, Mr. John Gilman, Mr. George Fulham, Mr. Charles Penyston, Mr. Robert Hyde, Mr. Edward Terbury, Mr. Henry Holden, Mr. Stephen Weekes, Fellows of the said College, have been severally guilty of disobedience to His Majesties Command, and obstinately contemned His Majesties Royal Authority, and do still persist in the same: We have thought fit, upon mature consideration hereof, to declare, pronounce, and decree, that the said Dr. Charles Aldworth, &c. and every of them be Deprived and Expelled from their respective Fellowships, and we do by this our Sentence and Decree, Deprive and Expel them from their said several

several respective Fellowships. Given under our Seal the 16th. of November 1687.

About Twelve a Clock, as soon as their Lordships rose, the Decree for the Expulsion of these Twenty Five Fellows was fixed on the College Gates in the Form aforesaid.

The Fellows under-named then gave in Papers subscribed by themselves to the Lords Commissioners in this Form.

§. 6.
The Expelled
Fellows give
in their Pro-
testation a-
gainst the
Lords Com-
missioners
Decree.

May it please your Lordships,

I Do profess all Duty to His Majesty, and respect to your Lordships, but beg leave to declare that I think my self injured in your Lordships Proceedings, and therefore Protest against them, and will use all Just and Legal ways of being relieved.

*Others desired that
the like Protestation
might be entered for them
Novemb. the 16.
1687.*

*Charles Aldworth.
James Bayley.
Joseph Harwar.
John Gilman.
Tho. Bateman.
Edw. Terbury.
Stephen Weelkes.*

Then their Lordships Ordered them to withdraw, Register. and proceeded to Admit others into their places, and in order thereunto, called for those who were recommended by His Majesties Mandates. viz. (a) Mr.

Charles Goring, Mr. Thomas Higgons, (b) Mr. Fairfax, Mr. Robert Hill, Mr. John Warburton, Mr. Francis Haslewood and Mr. Lawrence Wood. But none

(a) Dated 11.
November.
(b) Dated 12.
Nov. 1687.
Nov. 13. 1687.

of

of them appeared except Mr. *Thomas Higgons*, whereupon their Lordships sent for three of the Demys, viz. Mr. *Samuel Jenefar*, Mr. *Mander* and Mr. *Hanson*, and the two last desiring to continue Demys, their Lordships Admitted Mr. *Higgons* and Mr. *Jenefar* Fellows, they taking the usual Oath of a Fellow.

Then Mr. *Bradley Whalley*, Mr. *Walter Wallb* and Mr. *Middleton* were called, but Mr. *Middleton* not appearing, Mr. *Whalley* and Mr. *Wallb* were Admitted Demys and took the Oath of a Demy, and their Names were entred in the Buttry-Book.

Then their Lordships took into their consideration the Case of the absent Fellows; & the non-appearance of Mr. *Maynard*, Mr. *Hicks* and Mr. *Goodwin* seeming excusable, by the Certificates produced and Oaths made in their behalfs, and also it appearing that they and Mr. *Francis Smith* (who is Travelling abroad) had not been any ways concerned in the whole Affair, their Lordships thought fit to excuse them: And left the Expulsion of the rest, viz. Mr. *Hawks*, Mr. *Holt* and Mr. *Thornton* to the President, who they conceived had full Power to Expell them, if hereafter at their return to the College they should refuse to make their submission in the same manner as proposed to the rest of the Fellows, and so the Lords Commissioners concluded.

What followed after their Lordships return to London,

At a Court held in the Council Chamber at Whitehall the 28th. of November 1687. Present the Lord Chancellor, Lord President, Lord Chamberlain, the Bishops of *Durham*, *Rockester* and *Chester*, the Lord Chief Justice *Wright*, the Lord Chief Justice *Herbert* and Mr. Baron *Jenner*. The

§. 7.
Out of the
Register.
What was
done by the
Lords Com-
missioners at
Whitehall.

The further Account of the Proceedings of the Visitation of *St. Mary Magdalen College in Oxford* was Read, upon which it was moved, that the Expelled Fellows should be further proceeded against by a Sentence of Incapacity. The Lords upon debate were of Opinion, that the said Fellows ought to be incapacitated from receiving any Ecclesiastical Preferments for the future, and direct that Mr. Solicitor General, Sir Robert Baldock, Sir Thomas Pinfold and Dr. Hedges shall Attend the next Morning at Nine of the Clock upon this matter.

The Lords Commissioners resolution to Incapacitate the Expelled Fellows, &c.

At a Court, &c. the 29th. of November 1687: Mr. Solicitor General, Sir Robert Baldock, Sir Thomas Pinfold and Dr. Hedges attend and have the following Paper delivered to them.

The Lords think it requisite, that the Fellows lately Expelled out of *St. Mary Magdalen College* should be Incapacitated from receiving any Ecclesiastical Preferment for the time to come, and desire you to consider of the Method and best manner of proceeding herein.

Their Lordships appointed them to give them their Opinion upon the matter upon Monday next at Ten in the Morning; but the Meeting was put off till Thursday the 8th. of December.

At a Court the 8th. of December 1687. Present the Lord Chancellor, Lord President, Earl of *Huntingdon*, the Bishops of *Durham*, *Rochester* and *Chester*, the Lord Chief Justice *Wright* and Baron *Jenner*.

Mr. Solicitor General, Sir Robert Baldock, Sir Thomas Pinfold and Dr. Hedges, gave their Answer upon

upon the Paper given them the 28th. of the last Month concerning the Fellows lately Expelled out of *St. Mary Magdalen* College, the Lords enter upon debate of the matter, and put off the further consideration thereof till *Saturday* the 10th. Instant, at Four in the Afternoon.

At a Court the 10th. of *December* 1687. The last mentioned Lords being present.

The Lords re-assume the Debate concerning the Fellows lately Expelled out of *St. Mary Magdalen* College, and agree upon the following Order.

§. 8. At a Council held in the Council Chamber at *Whitehall* the 10th. of *December* 1687.
Present.

Lord Chancellor.	Lord Bishop of <i>Rochester</i> .
Lord President.	Lord Bishop of <i>Chester</i> .
Earl of <i>Huntingdon</i> .	Lord Chief Just. <i>Wright</i> .
Lord Bishop of <i>Duresme</i> .	Baron <i>Jenner</i> .

By His Majesties Commissioners for Ecclesiastical Causes, and for the Visitation of the Universities, and of all and every Cathedral and Collegiate Churches, Colleges Grammar-Schools, Hospitals, and other the like Incorporations or Foundations and Societies.

The Sentence
of Incapaci-
tating.

Whereas we thought fit by our Order of the 22^d. Day of *June* last to declare and decree that the pretended Election of *Mr. John Hough* (now *Dr. John Hough*) to the Presidentship of *St. Mary Magdalen* College in the University of *Oxon* was void, and therefore did amove the said *Mr. Hough* from the place of President of the said College.
And

And whereas the Fellows of the same werelikewife Convened before us for their disobedience to and Contempt of His Majesties Authority by making the said pretended Election, and it now appearing unto us, that the said Dr. *John Hough*, Dr. *Charles Aldworth*, Dr. *Henry Fairfax*, Dr. *Alexander Pudsey*, Dr. *John Smith*, Dr. *Thomas Bayley*, Dr. *Thomas Stafford*, Mr. *Robert Almond*, Mr. *Mainwaring Hammond*, Mr. *John Rogers*, Mr. *Richard Strickland*, Mr. *Henry Dobson*, Mr. *James Bayley*, Mr. *John Davys*, Mr. *Francis Bagshaw*, Mr. *James Fayer*, Mr. *Joseph Harwar*, Mr. *Thomas Bateman*, Mr. *George Hunt*, Mr. *William Cradock*, Mr. *John Gilman*, Mr. *George Fulham*, Mr. *Charles Penniston*, Mr. *Robert Hyde*, Mr. *Edward Terbury*, Mr. *Henry Holden* and Mr. *Stephen Weekes*, lately Fellows of the said College do persist in their disobedience and contempt, we have thought fit, upon mature consideration of the matter, to Declare, Decree, and Pronounce, and we do accordingly Declare, Decree and Pronounce, that the said Dr. *John Hough*, Dr. *Charles Aldworth*, &c. as before recited, and every of them shall be and from henceforth they are hereby declared and adjudged Incapable of Receiving or being Admitted to any Ecclesiastical Dignity, Benefice or Promotion, and that such and every of them who are not as yet in Holy Orders, shall be and are hereby declared and adjudged incapable of Receiving and being Admitted into the same. And all Arch-Bishops, Bishops and other Ecclesiastical Officers and Ministers within the Realm of *England* are hereby required to take notice of this our Sentence, Order and Decree, and to yield Obedience thereunto. Given under our Seal the 10th. Day of December 1687.

The Lords agreed to send a Duplicate of the foregoing Order under their Seals to every Arch-Bishop and Bishop, which accordingly was done.

Thus I have drawn to a Conclusion the whole Proceedings concerning this College, as to the Declaring Void the Election of *Dr. Hough*, and the Suspending of *Dr. Aldworth* and *Dr. Fairfax* by the Lords Commissioners at *Whitehall*, and the Expelling the forenamed Fellows by the Lords Visitors at *Oxford*, together with this Finall Decree of Incapacitating them by the Lords Commissioners at *Whitehall* in Conjunction with the Lords Visitors at *Oxford*.

I shall now proceed to give an Historical Account of the Nature of the Societies, or Incorporations, called Colleges and Universities.

Secondly, Some Visitations of the Universities of *Oxford*, or particular Colleges by Legatine, Metropolitcal, Episcopall, or Local Visitors, or by the Immediate Authority of the Kings of *England* from Age to Age.

Thirdly, Several Instances of the Kings of *Englands* Dispensations with the Statutes of Universities or particular Colleges.

Fourthly, I shall Answer the Objections.

CHAP. III.

Of the Nature and Constitution of the Societies of the Liberal Arts, such as Colleges and Universities are.

SECT. I.

Concerning Incorporations in General and the Privileges granted to the Universities of Oxford and Cambridge by our Kings or the Popes.

Before I Treat of the Royal Foundations, or the particular Charters, or Bulls granted to the University of Oxford, I think it convenient, as a Preliminary, to give the Ingenuous Reader a short abridgment of what our Common Lawyers have delivered how the Incorporations of this Kingdom are all Constituted by the Kings of England, Privileged from the Crown, and are at the sole Will and Pleasure of the Sovereign who may at his pleasure for mis-user, non-user, or abuser dissolve them according to Common-Law. First of the Subject matter of such Incorporations.

§. 1.
All sorts of Societies and Corporations are Founded by the King.

A Corporation is the same according to (a) *Bracton* (a) *Lib. 2. fol. 5. 6. Coke 10 Rep. 29.* which the Civilians Style *Collegium* or University; *Si Rex concesserit*, says he, *alicui Universitati, sicut Civibus & Burgensibus*, so that in his time an Incorporation by the Name of Citizens and Burgeses was called an University, in the same Sense that *Communitas* was Styled, signifying any Society that was

The Ancient and Modern use of the word University.

under some special Denomination, so *Bodinus* saith, by the word *Collegium* no particular Society is determined, but under that Name Corporations of several natures are contained, and whether Lay or Ecclesiastical is specified by the ends for which they are Constituted; but now the word is generally restrained to the Academies of the Liberal Arts.

(a) *coke 10. Rep. fol. 14.* Of the Constituting parts of a Corporation. (b) 21 E. 4. fol. 22. All Natural persons, (a) as such, are capable of holding or taking this Right of a Politic Capacity, and as all the natural persons are an Essential part constituting the Body Politic (b) so all the operations and exercise of the Rights are only performed by the Natural persons.

(c) *Attorney Generals Argument for Quo warranto against London. fol. 2.* Therefore when the Question is of non-user or abuser of Franchises by a Corporation, it must of necessity be intended for some Act (c) or negligence of the Natural persons, or those Officers employed by them: For whatever Franchises any persons enjoy they do it as Usu-fructuaries.

§. 2. It is to be considered, that such Societies ought to be Constituted by none but the Sovereign, otherwise the Government would be in danger, if Liberty were granted for persons to enter into Combinations: For however specious they might at first make the end of their uniting, yet they might abuse the Power to the detriment of the Common-weal, therefore in the Digests we find the Law thus (d) *neque Societas, neque Collegium, neque hujusmodi Corpus, passim omnibus habere conceditur nam & legibus & Senatus-consultis & principalibus constitutionibus ea res coercetur.* Agree-

(d) *Leges neque Societas i. f. quod cujuscumque Universitatis.* (e) *In Regia Benevolentia recumbit specul. ali. Rot. Rem. 11 E. 2. M. 14. Intus.* able to which I find in the Letter from King Edward to the Pope in behalf of the University, that it enjoys (e) its Privileges by special Royal Benevolence.

By the Constitution of our Laws this Right, as all Jurisdiction and Franchises are, is Lodged in the Crown, and thence only derived; So (a) *Bracton* (a) *Rex habet omnia Fura in manu sua quae ad Coronam* & *quibus, & qualiter referuntur*, thus resolves it. The King saith he, hath all the Rights in his own Hand which appertain to the Crown and his Lay-Power, and the Government of the Kingdom. He hath also Justice, and Judgment, which are Jurisdictions, and those things which appertain to Peace.

(a) *Rex habet omnia Fura in manu sua quae ad Coronam* & *quibus, & qualiter referuntur*, thus resolves it. The King saith he, hath all the Rights in his own Hand which appertain to the Crown and his Lay-Power, and the Government of the Kingdom. He hath also Justice, and Judgment, which are Jurisdictions, and those things which appertain to Peace.

ones; habet etiam ea quae ad pacem pertinent. Ea quae dicuntur privilegia, licet pertinent ad Coronam, possunt ad privatas personas transferri, sed de gratia ipsius Regis speciali.

He further observes, that those things which are called Privileges, tho' they appertain to the Crown, may be transferred to private persons, but of the special Grace only of the King:

§ All the Law Books Unanimously agree, that none can make Corporations but the (b) King, and such Power cannot be prescribed, for it is inherent in the Crown: Therefore Sir *Edward* (c) *Coke* calls them Creatures of the Crown.

(b) 49 E. 3. 4; 49. Aff. 8. (c) Co. 10. Rep. f. 33. b.

The Nature of some (d) Corporations is to be Constituted by the King alone, as the Dean and Chapters, Majors and Commonality; some have been by the Popes alone, and some mixt by the King for the Temporal Possession, by the Pope for their Spirituality. However the King is still the Donor, Fountain, and Spring from whence these and all other Liberties flow.

(d) Attorny Generals Argument for the Quo Warranto Ms. p. 9.

My (c) Lord *Coke* saith there are Four things, that are of the Essence of a Corporation: First a Legal Authority, which he saith is Four ways; First, By Common Law as by the King alone, which therefore

§. 3. (c) *Suttons Hosp. fol. 29.* Things requisite to a Corporation.

is said to be by Common Law as the most known and regular way ; Secondly, By Authority of Parliament ; Thirdly, By the Kings Charter ; Fourthly, By prescription ; which in effect are all by the King : for what is by Act of Parliament is certainly so , and what is by prescription is presumed to have obtained a Grant from the Crown, which in process of time hath been lost and so by the Tacit allowance and consent of Successive Kings acquires a Right. His other Essential parts are in the *Operative* words, of which there is no need to discourse here.

(a) *Id.* p. 26, *§* By the Statute of *Merton* (a) no Grant of Lands to Pious or Charitable uses are good without the Kings Licence : For this purpose, the Kings Grant is absolutely necessary, for that it was solely in his Power to Grant, and the Donor of the Lands without the King can do nothing to establish a perpetuity.

Without capacitating , the Incorporating cannot be effected, for the Inhabitants of a Village or City are single persons, which are not in a Capacity to take any Lands in Succession (the like is to be said of Liberties, Privileges and Immunities) but only to their Singular Heirs, but such Inhabitants are in a Capacity to be Incorporated by the King, and after such an Incorporation to have a Succession of Lands, Tenements and Hereditaments.

§. 4.
The end of
Corporations.

(b) Attorney
Generals Argument *ut
supra.*

§ The general intent and end of all Civil Incorporations, allowed by the Policy of the Law (b) is in order to better Government, subservient to the Oeconomy of the whole by such prescribed Rules as the Kings of *England* have been Graciously pleased to limit them by, which as Emergences happened might be altered by the same Power that bestowed them.

Bishop

¶ Bishop *Saunderson* (a) according to his Judicious way of expressing matters, saith that Sodalities, Bodies Corporate, or Colleges are as Members of the great Body the Kingdom or Common-wealth, and are contained in it as the Inferior Orbs of the Heavens are in the Superior. That these are Incorporated by the Grants of Princes of their special Grace; and enjoy not any Rights, Privileges or Powers besides those which by prescription of long time, or from Royal Charters, it appears they have had Granted to them. Therefore whatever Power they have of making any Laws for their Government, it is derivative and no way Primitive, and is ultimately resolved into the Supreme Regal Power as it's true Original. Therefore such like Societies or their Magistrates, cannot at their own Arbitrament constitute or exercise any Power in making Laws, but according to the manner and measure of the faculty Indulged to them by the Prince.

(a) *Quum ex concessione principum, id quod ex gratia spectali corporentur isti a modi Sodalitates, nec alii gaudeant iuribus privilegiis vel potestatibus extra ea quae vel ex diuturna temporis praescriptione vel ex chartis diplomatumque Regis confirmatae fuisse sibi concessa. De obligatione Conscientiae praef. 7. sect. 23.*

¶ Hence it is, that whoever is the Founder of a College, the King calls it upon all occasions *Our* College, and the Members likewise in all Applications to the King say *Your* College, for tho' the particular Founder give the Land, yet as it is a College, or Corporation the King is the Founder.

¶ So it is (b) vouched for Law, that the King without the Ordinary may Erect Universities, and this is not a Prerogative our Kings only enjoy, but we find it frequently in the Grants of the Modern Roman Emperors and Kings.

(b) *Patrick Case Trinit. 18. Car. 2. Keble Rep. 2d. Si. fol. 65.*

Examples of the Emperors giving Power to Count *Palatines*, to make Doctors in Divinity, Law, Physics, and Philosophy, (which are the peculiar Degrees conferred by Universities *quâ Universities* by the

§. 3. The Power of conferring Degrees in Universities conferred on the Subjects.

(a) *Thes. 22.*
&c.

the Grants of Privilege from their respective Sovereigns, may be found in *Tho. (a) Sagittarius*, cited by Mr. Selden.

(b) *Sacri Lateranensis Palatii Aulaque nostra Cæsaria & Imperiali, Consistorii Comitum — Doctores, Licentiatos, & Baccalaureos in utroque Jure Magistros, item & Baccalaureos Liberalium Artium, & Philosophia, nec non Poetas Laureatos Creare, Promovere Ordinare constituere & facere Selden, Tit. Ho. ca. 1. fol. 2. fol. 398.*

So *Rudolphus* the second Emperor of Germany granted by Patent to *George Obrechtus*, and his Son *Thomas*, both Professors of Law at *Strasbourg*, the Father being Primar Professor there, that they should be successively Counts of the Holy Lateran Palace, and of the Cæsarian Hall and Imperial Consistory, and that they have Authority to create, promote, ordain, and constitute and make Doctors, Licentiates, and Bachelors in both the Laws, Masters and Bachelors of the Liberal Arts, and Philosophy, and likewise Poets Laureats, with all and singular Privileges, Prerogatives, Exemptions, Honors, Preeminences, Favors Indulgences, and Graces whatsoever, the like Graduates in *Vienna, Paris, &c.* enjoy, &c. Dated at *Prague* the 19th. of November, 36 Regni 1610.

(c) *Tho. Sagittarius ad Thes. 13.*

Maximilian the Second Emperor, (c) by his Letters Patents Dated at *Prague* the 9th. of May 1575. created *Henry Julius* the first Rector of the University of *Helmstadt* and his Successors to be chosen into the said Office and Dignity, and into the Titles of Counts *Palatines*, and made him the first Rector.

(d) *Idem ad Thes. 22.*
 (e) *Adhibitis in cujus libet Doctoris creatione Doctoribus eximii de professione creandi ad minus tribus, qui Doctorandum examini subiciant.*

So *Rodolphus* the Second Grants (d) to *Nicholas Reusnerus*, Power of making Doctors as well in Divinity as in Law, Physick, and Philosophy, and sometimes the Clause is added (e) that such Counts *Palatines* shall call to them at least three Eminent Doctors

Doctors of the Faculty, that the Doctor to be Created Professeth, who shall examine him that is to be Created Doctor.

By all which it appears, that the Sovereign Impowers persons to confer the University Degrees.

SECTION II.

From whom the University of Oxford hath had all its Privileges.

HAVING dispatched what I thought fit to clear the point, that the Kings of England have the sole prerogative in their Dominions to make all sorts of Corporations: I now proceed to produce such Testimonies as I have found, that the University of Oxford primarily owe all their privileges *quâ* an University to the King solely, as the Donor or allowor of them.

King Alfred Reigned, according to our best Historians, 800 Years since, and is owned by all to be the great Restorer of the University of Oxford. In the MSS life of St. Neotus commonly called St. Needes, as Cited by (a) Malmsbury, (b) Leland and others, Alfred is said to have Founded public Schools for Arts and Sciences, and Lodgings for the Students, and replenished them with the Young Nobility: And John (c) Ross of Warwick tells us, that he Founded one for Grammar, one for Arts, and a third for Divinity.

It is likewise Recorded (d) of him, that he delivered to the University Laws and wholesome Statutes

§. 1.
The Kings of England sole Donors of the Privileges during the Saxons times.

(a) Antiq.

Glasen.

(b) Tom. 3.

p. 11.

Tom. 4. p. 104.

(c) Lib. de Regibus.

(d) Gul.

Malmsb. de

Antiq. Mo.

Glasen. MSS

Ranalph Hygden. lib. 2.

for their Government, and adorned them with privileges, which he confirmed by his Royal Charter, and obtained from Pope *Martin* the Second about the Year 883. that they should be confirmed according as (a) *St. Neotus* had before requested from the Pope.

(a) *Lib. vii*
Neot. To. 4.
Baleus Cent. 2.
Nº. 23.

(b) *Wood Antiq.*
Oxon. fol. 13.
(c) *Id. A fol. 2.*
ad 42.

(d) *Scholæ*
publicæ per
urbes oppidaque
Regni continuas
e Risco Regis
Stipendiis pos-
uerit.
Hist. Aurea
par. 2. lib. 22.
c. 28. MSS.

(e) *Ireland To.*
4. p. 199.

(f) *Gul. Zam-*
bard in Archæ-
nomia Edit.
1563. fol. 126.
b.

§. 2.
(g) *Privilegia*
varia Uni-
versitatis simul
urbique indul-
sisse creditur
Henricum que
deperditæ
quævis olim
fuit, in Successorum tamen ejus Chartis aliquando memorantur, Wood Antiq. Oxon. fol. 49.

He was so great a Benefactor, that it is Recorded (b) of him, that he gave an Eighth part of his Revenues to maintain Scholars and the Lectures in the Schools.

To pass by many Saxon Kings, whose favors to this University are recited by (c) *Mr. Wood* in his Elaborate History of the University of *Oxford*; It is recorded (d) of *Canutus*, Successor to King *Edmund*, that he placed public Schools in the Cities and Boroughs of the Kingdom, appointing Stipends for them out of his Treasury.

Altho' *Harold* the First took away from the (e) Schools the Stipends, and the Lands from the University about 1036. yet *Edward* the Confessor about 1042. restored again the Goods of the Religious, and of the Professors of Ingenious Arts by Edict (f) in whose soever Possession they were. So that here is both an Example of a Kings seizing all the Revenues and consequently the liberties, and another restoring them to the University.

King *Henry* the First Anno. 1130. Built his Palace at *Bellamont*, and kept his *Easter* there. (g) My Author saith, he is believed to have granted several privileges to the University and City of *Oxford*, which tho' they be long since lost, yet they are remembered in his Successors Charters.

Anno 1134. Mr. Robert Pallesyn (a) flourished in that University, he was made Cardinal of St. Eusebius by Pope Celestine the Second, and by Lucius the Seventh was Chancellor, and was, saith my Author, in so great esteem with the King and the Pope, that he obtained Bulls and Grants both for Defending the Universities privileges, and the Administring the University itself.

(a) Leland To. 4. p. 140.
The Pope confirms the privileges granted by former Kings.

Anno 1229. 13 H. 3. There happening a great Sedition betwixt the University and Citizens of Paris, so that the Schollars shut up their Schools, and some withdrew themselves to Anjou, others to Rhemes and Orleans, (b) King Henry the Third by his Letters Patents Dated at Reading the 14th. of July 1229. Invited them to come into England to Study and chuse what Cities, Burroughs, or Villages they pleas'd, which the King would assign to them, and cause them to enjoy all fitting Liberty and Tranquillity which to the pleasure of God might be sufficient for them, by which the Kings power of Founding new Universities is manifest.

(b) Unde Re-stra duximus Universitati significandum quod si vobis places ad Regnum nostrum Anglia vos transferre, & in ea causa Studii moram facere. Civita-

tes, Burgor, vel Villas quasvunque vultis elegere, vobis ad hoc assignabimus, & omni modo, sicut decet, libertate & tranquillitate, qua deo placeat & vobis plene sufficere debeant, vos gaudeo faciamus. Rot. Pat. 13. H. 3. m. 6.

Anno 1142. 26 H. 3. The King being to go to Gascoign, having a care of the University of Oxford, (c) gave Power by his Letters Patents to Gualter Arch-Bishop of York, William de Cantilupe and William de Eboraco to receive complaints of the Clerks in the University, and to appoint what might be most of use to the University. This Arch-Bishop of York was Walter Grey, who was such a Benefactor to the University, that a Yearly Mass, with Placebo and Dirige was appointed for him on St. Martins

(c) Potestatem, datis ad eisdem literis, fecit Querimonias clericorum accipiendi & quod ex usu maximo Universitati esset, Statuendi Pat. 26 H. 3. m. 5.

Day, at which all the Regents were to be present.

From this Record we may learn that, notwithstanding any Power the Arch-Bishop of *Canterbury*, or the Bishop of *Lincoln* might by the Canons claim to Govern the University, yet the King by his Prerogative appoints special Guardians for them in his absence.

§. 3.
King *Henry*
the 3^d. grants
privileges
during his
pleasure.

Anno 1244. 28 *H.* 3. The King Grants for the quiet of the Students of the University of *Oxford* of his special Grace to the Chancellor and University, that during his pleasure, they should enjoy several privileges in the causes of the Clerks to hold Pleas in all moveable contracts, notwithstanding his prohibition, which was, that Secular Judges should have no Cognizance of Spiritual matters, or on the contrary. Dated at *Reading* the 10th. of *May* 28 *Regni*.

Nota bene.

By this it appears, that if such privileges were granted of the Kings special Grace, and only during his pleasure, how much more must it be judged requisite that Statutes, which were to Govern Elections, &c. should be at the Kings Liberty to continue them or suspend them at his pleasure, but of this I shall treat more fully afterwards.

This very Charter now mentioned, is Judged by some to be the Basis and Foundation of the Bull of *Boniface* the Eighth, obtained a few Years after from him.

Here once for all the Learned Reader is to observe, that as the Kings of *England* Granted to the University several Secular privileges, so the Popes granted them other Religious privileges by vertue of their place, Dignity, and Right Invested in them by the Canons

Canons according to what may be found in the

(a) History inserted into the old Book of Statutes ap-
 pertaining to the Chancellor and Proctors of *Oxford*,
 which runs thus. — The Kings Highness Exalted
 this University being adorned with many privileges of
 the Roman Bishops and of the Diocesans.

(a) *Hanc in
 super Universi-
 tatem Romano-
 rum Pontificum
 & Diocesano-
 rum privilegia
 multi modis
 adornatam sic
 celstudo Regis
 sublimavit.
 A. fol. 8. a. B.
 fol. 1. b. C.
 fol. 1. b.*

However tho' the Popes and the Diocesans granted
 the University several privileges, yet I shall shew here-
 after how the Kings of *England* have exercised a So-
 vereign power in all Affairs of the University, rescin-
 ding, dispensing with, or confirming Statutes at their
 pleasure.

¶ *Anno 1249.* (b) Upon the 29th. of May 32 H. 3.
 The King being at *Woodstock* granted to the Scholars
 of the University several privileges there recited, and
 by his Letters Commanded the Sheriff, Mayor and
 Bayliffs of *Oxford*, immediately to observe and cause
 to be observed the said liberties, which he caused to
 be Enrolled the 33d. of his Reign, and it is observ-
 able in this Grant, that *Ralph Fitz-Nicholas*, Steward
 to the King by the Kings Command, set his Seal as
 Witness to this Grant of the King, a practice long
 since laid aside; the Kings *Teste me ipso* being now
 sufficient.

(b) *Claus. 42.
 H. 3. M. 9.
 Wood Amiq,
 Ox. fol. 95.
 lib. 1.*

Anno 1275. King *Edward* (c) the first granted to
 the University many rights and privileges, which it
 would be tedious to recite, they may be seen in the
 Patent and close Rolls, 3 E. 1. M. 18.

(c) *§. 4.
 P. m. 3 E.
 1. M. 6.*

King *Edward* (d) the Second *Anno 1315.* Granted
 to the University several privileges, confirming to
 them the Grants made, *Anno 1244.* 29 H. 3. and
Anno 1255. 39 H. 3. and 1261. 46 H. 3.

(d) *R. P. m.
 H. 3. p. m. 2.
 M. 24.*

Anno

(a) Rot. Rom. 3
11 E. 2. M. 10.

(b) *Ut omnes
qui Gradum
Magistralis
Honoris in qua-
cunque facul-
tate affecti
sunt — consimi-
li velitis privi-
legio Decorare.*

*Disam Uni-
versitatem per-
petuare & pri-
vilegia quibus,
&c. usi sunt
bachelus & ga-
visti cum Aug-
mentatione no-
vorum conden-
dorum, &c.
Rot. Rom.
11 E. 2.*

(c) Pat. 1 E. 3.
M. 8.

(d) Pat. 27 E.
3. M. 4. Pat.
29 E. 3. No. 5.

Anno 1317. 11 Ed. 2: The King (a) writes to the Pope, that whereas Boniface the Eighth had granted to the Universities of France that Grace, (b) that all who had attained the Degree of Masters in whatever Faculty, might every where resume Lectures in the same, and continue them at their pleasure without any new examining, beginning again, or craving Grace from any; so he desires he will Adorn the University of Oxford with the like privileges. By this it appears, that the Pope could grant the privilege, that whoever had attained to Degrees of Masters in this University might enjoy the like Honor in all others: But none can infer from hence that the Degrees they took here were by the Popes Grant solely.

In the same Year we find the King writes to the Pope in behalf of the University of Cambridge desiring him, that he would perpetuate it, and would augment with new privileges those which the Chancellor, and Scholars of the same University, and their Predecessors had hitherto used and enjoyed. By which it seems some, or at least some general privileges, in Foreign parts, were desired, perhaps such as were craved for the Masters in Oxford.

Anno 1327. King (c) Edward the Third in the first of his Reign, by *inspeximus*, confirmed all the privileges which had been granted to the University of Oxford by his Ancestors Kings of England, particularly those which King Edward the First had granted, confirming the Charter of King Henry the Third.

Anno 1353. 27 E. 3. The King (d) granted several privileges to the University, but the Amplest Charter was granted by that King the 29th. of his Reign, wherein, besides several privileges of a Secular nature,

nature, the (a) Chancellor hath power to compel the Inhabitants of *Oxford*, and the Suburbs to the observance of some of these privileges by Ecclesiastical Censures, and appoints that the Sheriff of *Oxford* should take an Oath yearly, to protect and defend the Masters and Scholars of the University, and their Servants from violence, and concludes that what by reason of various and tedious affairs he could not then, he specially reserved for himself to order. By which it appears, that the power of ordering all things relating to the University was solely in the King.

(a) Cancellarius possit per censuras Ecclesiasticas compellere — Jam ordinare non possumus variis & arduis negotiis prapediti, Ordinationem hujusmodi nobis specialiter reservamus.

¶ *Anno* 1375. 49 E. 3. The Chancellor, Masters, and Doctors of Divinity, and Masters of Arts (by power no doubt granted to them by some Kings of *England*) made several Statutes which seemed grievous to the Canon and Civil Law Bachelors and Professors, of which complaint being made to the King he declared them void. By which it appears, that the King hath the power of making the Statutes, for whoever hath the power of destroying, and abrogating, hath the power of constituting and appointing.

Cusus est condere ejus est destruere.

Anno 1378. (b) By a Famous Charter of *Inspection*, King *Richard* the Second Corroborated the privileges granted by his Ancestors to the University, (c) and released them of a Subsidy of 4 d. a Year, imposed by King *Edward* the Third upon every Clerk not Beneficed, remaining in the University, which he (d) confirmed by Patent the 5th. of his Reign, and *Anno* 1379. 30. Regni, he charged his Justices, Sheriffs, &c. to permit the Chancellor to enjoy and use all their Liberties granted by the Charter of the Kings Progenitors.

(b) Rot. Chart. 2. Ric. 2. No. 14.

(c) Claus. R. 2. M. 23.

(d) Pat. 5 R. 2. par. 2. No. 28.

on A

By

§. 5. Inferences from
he before re
cited Charters.

By all which it appears most manifest, that the University owned the Original Donation of their privileges to the Crown, which extended even to the ordering the taking of Degrees, which is the more clear for that I find, that the Regent Master, there being but one it seems at that time, and the Bachelors and Scholars of the Dominicans complained to the King, that they were (a) prohibited from those Degrees with which they ought to be Adorned, by some Rescript or Mandate sent to the Chancellor, and Scholars under the Kings Privy Seal, obtained by deceit, saith the Record, which shews, that if it had been otherwise obtained, they had been bound by them, for there is no mention as if any preceding Grants could have rendred them Illegal, but being proved it seems got by deceit, the King abrogated them upon their Petition.

(a) Cl. 2. R. 2.
nu. 4.
*Per Rescripta
qua privato
sigillo Regis
per fraudem
impetrato
muniebantur
prohibitos a
Gradibus qui-
bus ornari
de buerunt.*

(b) Rot. Chart.
2 H. 4. par. 1.
No. 2.

Anno 1401. King Henry the Fourth (b) in the second of his Reign not only confirmed the Antient privileges of the University, but added others to them and enlarged the Limits of the Chancellors Jurisdiction, within which they might determin Causes, notwithstanding the Rights of the Justices or other Magistrates.

(c) Fragment.
vet. Regist.
Wood lib. 1.
Antiq. Oxon
fol. 205. a.

§ Anno 1411. 12 H. 4. When the Chancellor, (c) and Proctors, and Heads of the University had been summoned before the King to give an account of the Popes Bulls, which they pretended as the ground of their Contumacy, and the Chancellor and Proctors were displaced, the King Commanded others to be Elected to Succeed in their offices for the remaining part of the Year, by which the Kings Jurisdiction over Magistrates of the University is very clear.

Another instance of the Kings absolute Jurisdiction over the University *pro arbitrio* is (a) what I find Anno 1420. 9 H. 5. That the King a Year before his Death had designed to amend the Statutes of the University, which as they have their force only by the Kings pleasure may be Abrogated or Suspended by the same.

(a) *Rossus lib. de Regibus p. 257.*

I shall add to these one instance (b) of the Foundation of Queens College in Cambridge as I find it set out in a Plea 19 Car. 2. in Dr. *Patrick's* Case, viz. That King Henry the Sixth upon the 3d. of March 26 Regni, gave Licence to Margaret his Queen to Found a perpetual College of Fellows in the University of Cambridge, to remain there to Study and Pray, *ad Studendum & Orandum*, and the King willed that the President and Fellows should be Chosen, Instituted, Regulated, Governed, and Deprived according to the Order and Statutes made by the Bishop of *Coventry* and *Lichfield*, and the College to be Governed, by a President and Four Fellows, and that the President and those Four Fellows and their Successors, according to the Orders and Statutes, may Admit more Fellows, &c. And that the said Queen Margaret by vertue of the same Licence the 15th. of April the 26th. of King Henry the Sixth, did accordingly Found the College, &c. as before specified, and gave Licence to the Bishop of *Coventry* and *Lichfield* to make Ordinances; and Statutes, which he accordingly did; among which one is, that the College should consist of a President and Fourteen Fellows, every one of which after they were Regents in Arts should enter into Holy Orders, unless the President and the greater part of the Fellows did permit longer time.

§. 6.
(b) *Mf. in the Custody of Sir Thomas Powis Attorney General composed by his Father.*

The method of Founding a College.

Concerning this College I find further in the plea, that King *James* the First upon the 9th. of *March*, the second of his Reign confirmed all the Charters and Donations made to the Chancellor, Masters and Scholars of the University of *Cambridge*, and particularly granted that the Chancellor of the said University, and in his absence the Vice-Chancellor should be the Ordinary Visitor of all the Colleges within the said University, in which no special Visitor was appointed, and that no special Visitor was nominated for this College.

By these Patents it appears plainly how the Foundation it self, and the endowments thereupon were by the Kings special Licence, and tho' the King made not the Statutes for the Government of the same, yet it was by His special Appointment, that the Bishop of *Coventry* and *Lichfield* was ordered to make them.

I shall not need to recite any Grants of this King to the University of *Oxford*, because they are much in the same Tenor as those of his Predecessors, I shall therefore pass to what I find done by Pope *Sixtus* the Fourth; wherein it will appear what Confirmation and Corroboration of the Charters of the Kings of *England* were made by the Pope.

§. 7.
The confirmation
of Pope
Sixtus 4th.

ANNO 1478. 18 E. 4. The Grants of the Popes being either Worm-eaten, or lost by some evil accident, especially the Famous Bull of *Boniface* the Eighth, which had been Annulled in the times of King *Richard* the Second and H. 4. and was not since Confirmed; The University Employ (a) *John* Abbot of *Abingdon*, going to *Rome* about the Affairs of his Monastery, to get their privileges confirmed and restored to their former vigor, which he effected, and brought the Bull
of

(a) Wood
Antiq. Oxon.
lib. 1. 230. b.
F. F. fol. 74

of *Sixtus* the Fourth to that purpose. Dated at *Rome* at *St. Peters* on the Ides of *September*, Anno 1479, and the 9th. Year of his Pontificat, which was the 19th. of *Edward* the Fourth.

In which Bull the Grant of Pope *Boniface* the Eighth is confirmed, and many particular privileges recited, after which follows that as he is informed, the present Chancellor, Masters, Doctors, and all the Scholars of the said University desire to all those privileges, for the firmer (a) subsistence of them, that he would add the firmness of his defence. The Pope who with special love respects the Chancellor, &c. For their fervor of pure Devotion, and of their Faith which they bear to him, and the Roman Church; by Apostolic Authority, of his proper motion, not at their Instance, but of his own meer Liberality, by the Tenor of these presents confirms, and approves all the privileges granted by the present King *Edward*, as well as by other * Kings of *England* to the University and the Students in it, holding the Tenors of the granted privileges to the presents for express, and Decreeing them to obtain the strength of a perpetual firmness, he Establisheth them by the Patronage of the present Writing, supplying all and singular defects of Law as well as Fact, if by chance any have Intervened in them. Concerning the power the Pope gave to the Chancellor to Absolve from the guilt of perjury in breaking the Statutes, and the punishments appointed by them, and in some cases dispensing with them, I shall treat when I come to consider the Kings dispensing with the Statutes.

(a) *Permissis omnibus pro illorum subsistentia firmiori, nostri adicii muniminis firmitatem. Ibidem.*

* *Singula tam in Regum, quam Prædictorum liberis concessa Auctoritate Apostolica tenore presentium confirmamus & Approbamus, &c. Ibidem.*

There is another Bull of the same Pope, dated the 6th. of the Kalends of *August* the same Year,

wherein he confirms the Bull of Pope *Innocent* the 4th. Anno 1254. 38 H. 3.

I shall pass by the Confirmations of King *Richard* the Third and *Henry* the Seventh, who were both very favorable to the University.

§. 8.
The Charters
of King H. 8.
and his power
over the Uni-
versity.
(a) In *pixide*
lona 3.

Anno 1510. 2 H. 8. It being Customary for the Kings, when they begun their Reigns, to Grant privileges to the University, King H. 8. confirmed (a) their privileges and encreased them, and among the rest he Ratified the most Ample Charter of King *Edward* the Fourth and all others, granting them a truly Royal Charter exceeding all those of his Predecessors, as the Record saith.

(b) F.F. Ep. 30.

☞ This Year the University was solicitous to retrieve the Bulls of Popes, which had been by evil Arts stolen by some that wished evil to the University; upon which account the (b) Chancellor was desired to get them Transcribed out of the Chancery of the Apostolic See; But my Author complains that some Men upon the Banishing the Popes Authority here, not warmed with a temperate zeal, as they ought, but being all a Fire Committed to the Flames not only all the Bulls they could find, but what ever they could meet with that made any mention of the Roman Religion, by which many matters of great moment relating to History are lost.

Wood *Antiq.*
Oxon. lib. 3.
fol. 241. a.

In the Year 1518. The 10th. of King H. 8th. Cardinal *Wolsey* being then not only a Favorite of the King but of the Pope, and attending the King and Queen to Oxford, (c) in the Convocation House, having told the University of his Study and most propense affection to it, and that he intended to Institute certain Lectures there, he earnestly intreated they would give him power to correct certain Sta-

(c) *Regist. Colli.*
Marton fol. 241.
a.

tutes,

tutes, which concerned learning, of which, some being repugnant among themselves, for the amending of which the University had formerly appointed *Richard Fitz-James* Bishop of *London*, and *John Young* Bishop of *Calypole*. The University received the Benevolence of the Cardinal, with all due respect, and Writ to the (a) Chancellor about it, who Answered on the 2d. of *May*, that he did not approve that such Authority should be given to any besides the Chancellor, and the Congregation of Regents and Non-Regents: But he after changed his mind, and the 1st. of *June*, in the full (b) Convocation, it was Decreed that the Statutes should be delivered to the Cardinal to be Corrected and changed at his pleasure, and it was likewise ordained that the Liberties, Rights, and Privileges of the University, saving to every College their peculiar Rights, should be delivered to him, with full power to reduce the public Discipline into what Form he pleased.

(a) F.F. Ep.
5861. Or.

(b) Ibid. fol. 31.

¶ In the Year 1520. The 12th. of *H. 8.* the Townsmen thinking by this surrender that the University was without their old privileges, took the occasion to abuse some Scholars; therefore the University thought fit that the matter of renewing and encreasing their Rights and Privileges should be hastened, and the Cardinal being moved in it, appointed the two foresaid (c) Bishops to Expedite it, and the King granted whatever was desired in this particular betwixt the Townsmen and the University.

§. 10.
The Kings retaining the privileges in his hands and restoring some particular ones at pleasure.

(c) H. fol. 56. a.

Anno 1521. The 13th. of *H. 8.* I find the University (d) apply to the Cardinal for the hastening of the Grant of the Kings Charter, and the Recognition of the Statutes, and in the Year following I find

(d) Wood
Antiq. Oxon.
lib. 1. fol. 247.

that.

that the Cardinal having still the University Statutes in his Hands, prorogued the Terms of the Proctors, and ordered other things in the University.

Anno 1523. the 14th of King H. 8. The Cardinal obtained (a) a Charter of most Ample Privileges, so that however the University had committed their Statutes and Privileges to the Cardinal for Correction and Amendment, which they had reason to do, because his Dignity, and power was no less great than his intended Benefaction in Founding and Endowing *Christ-Church* and settling several Lectures; yet all this is to be supposed to be in subordination to the King, for he alone Grants the Charter which (b) was sent *Anno 1528. the 20th of H. 8.* by Dr. *Hyden* Dean of the Cardinal College. It is also further to be observed, that this Charter was upon some Command of the King (c) re-delivered to the Cardinal, and after his precipitate ruin it was not restored to the University till the Year 1566. which was Forty two Years after.

(a) Wood
Antiq. lib. 1.
fol. 253. a.

§. 1.1.
The King seizeth all their privileges.
(d) F. F. fol. 122.
Vol. de Chartis
Academ. Oxon.
Bib. Cotton. sub
faustina c. 7.
F. F. 122.

§ To clear the main point yet more. *Anno 1532. 24 H. 8.* The King Commanded, that both the University and City should deliver into his Hands all their Rights, and in *January* it was Decreed in (d) Convocation, that there should be two Instruments of submission drawn up for the University, one containing the surrender of all the Regal and Episcopal privileges, and the other the Regal only, and that the Regal privileges should be sent to the King, but the Episcopal and Papal should be kept, but my Author thinks the last were also sent. After this when any office in the University was void, the King appointed the Successors, so that it is found that even one of the Bedles was so placed.

This

This Instance doth sufficiently manifest the Kings absolute power over the Universities in taking into his hands at his pleasure all, or any part of their privileges, and restoring them when he thinks fit as he did these.

Anno 1541. 33 H. 8. The King (a) appointed Rules about the Election of the Proctors, and ordered several other things relating to the better Governing of the University.

Anno 1543. 35 H. 8. The King restored the Liberties to the University, which he had retained from the Year 1522. yet so as the Vice-Chancellor *Tresham* entred into a Recognizance of 500 l. that the University should exercise none of the privileges granted Anno 1523. by the means of Cardinal *Wolsey*.

The King restores their privileges conditionally.

Thus I have given an Abridgment of what the Laborious Mr. *Wood* hath related concerning the Kings or Popes Grants of privileges to the University, or what I have met with other where, relating to this business, and shall now proceed in my designed Method; referring the Reader for later Charters to the Archives of the University, and the Act of Parliament for Incorporating both *Oxford* and *Cambridge*.

C H A P. IV.

Concerning the Visitations of the Universities, and particularly of that of Oxford.

S E C T. I.

Concerning the Kings Supremacy, and Power in Ecclesiastical Causes and Visitations.

§. 1.

IT cannot be expected, that I should discuss the Controversie here, how far the Popes power was exercised in *England* in matters Ecclesiastical, or in things to be done in *Ordine ad Spiritualia*. The Curious may have recourse to the Learned *Marca de Regno & Sacerdotio*, the *Concordata*, the *Regalia of France*, and Sir Roger Twissens *Historical Vindication*, if he would be satisfied in the boundaries of the Ecclesiastical and Secular power.

First, what Authority the Kings of *England* used before the Reformation.

It will be sufficient for my purpose to shew first, that long before the Reformation, several Kings of *England* permitted no Canons, or Constitutions of the Church, or Breves and Bulls of the Apostolic See, to be executed here without their Allowance, and that in several particulars, wherein the Pope in other places by the Canons, or the *Plenitudo potestatis*, exercised a special Jurisdiction, either some of our Ancientest Kings did the same, or if they apprehended any diminution of their Crown or Dignity to attend their exercise by any power not derived from their selves, they prohibited them.

And

And Secondly, That since the Supremacy hath been Established by Acts of Parliament in the Crown; The Kings of *England* may, according to the Laws in force, not only exercise all the powers they could, as Sovereign Princes, but likewise whatever the Pope *de Jure*, if not *de facto* could or did do, in the outward Regiment of Ecclesiastical matters: and consequently whatever was done in Visitations by the Authority of the Popes, Metropolitans, or Diocesan Bishops, may now be done by the Kings of *England* as Supreme Ordinary.

Secondly, What power they have exercised since the Reformation.

Before I enter upon this Subject, I desire it may be noted, that I bring not the Instances to induce a belief, that the Popes according to the Canons of the Church did not oppose some of the practices of the Kings I mention: But to shew how incongruously the Fellows of *St. Mary Magdalen* College acted, who knowing these things, and that later Laws had devolved upon the King even the power of the Pope exercised here *in foro externo*, should dispute the Kings Authority, in a matter so manifestly appertaining to his Royal Dignity.

6. 2. These Instances are produced to induce the Subjects obedience to the King whose Authority ought to be well considered.

For Brevities sake I pass the Saxon times. King *William* the 1st. for the sure Establishing his Conquest, is noted by *Eadmerus* (a) to have Introduced the *Norman* usages of his Ancestors, tho' he calls them new here. Among which he reckons, that none in his Dominions should own the Pope but by his Command, nor receive his Letters unless shewed first to him, and if the Arch-Bishop of *Canterbury* called and presided in a General Council of the Bishops, he allowed nothing to be appointed or forbid, unless they were accommodated to his Will, and were first ordained by him, nor suffered any of his Barons or Officers to undergo any Ecclesiastical Censure but by his precepts.

(a) *Histor. normanorum lib. 1. fol. 6.* to which he adds *de hujusmodi personis Episcopos, Abbatibus, & alios principes per totam terram Justitius, de quibus Indignum Judicatur, si per omnia suis legibus non obediunt. Idem.*

So that I think it not so strange, that during the Schism his Son *William Rufus* claimed as other Princes did, a Right to declare to which Pope he would adhere, some consenting to Pope *Urban*, others to *Clement*. Therefore the King demanded of *Anselm* from which of those Popes he would

What King *William Rufus* did. Upon the Schism none more fit than the King to resolve whom to adhere to.

receive

(a) *Rex dicit illi pro Apostolica non datur accepisse, nec sua vel paternae consuetudinis eadem extitisse ut prae suam licentiam aut Electionem Aliquis in Regno Anglia Papam nominaret; & quicunque sibi huius dignitatis Potestatem vellit praeferre, Unum foret ac si coronam suam sibi conaretur Anferre. Eadem. fol. 25.*

(b) *Nequaquam fidem quam sibi debebat simul et Apostolica sedis obedientiam, contra suam voluntatem, posse servari. fol. 26. N. 1.*

None to go to Rome but with the Kings leave.
(c) *Sed si, fuerit pro certo noverit, quod totum Archiepiscopatum in Dominium meum Redigam, nec illum pro Archiepiscopo ultra recipiam Idem. fol. 38. 10.*

The promise of an Arch-Bishop.

(d) *Pollitetur es per te, usque ac teger suat usque quaque deinceps servatorem, & eas sibi contra omnes homines*

receive his Pall, and the Arch-Bishop Answered him, he would receive it from Pope Urban. But the King (a) told him, that he had not yet received him for Pope, nor had it been his, or his Fathers Custom hitherto, that any should be received as Pope in England without his Licence and Election, and whoever would take from him this Power of his Dignity, should be esteemed by him as one that endeavored to take from him his Crown. And when Anselm Answered, that he would not in any thing depart from obedience and subjection to Pope Urban. The King in great wrath protested, (b) that the Arch-Bishop could not keep alike, or together, the Faith which he ought to the King, and the obedience to the Apostolic See, contrary to the Kings Will.

When in the same Kings Reign the Arch-Bishop was solicitous to have leave to go to Rome and Visit the Successor of St. Peter, for the being better instructed in the Government of the Church. He received Answer (c) from the King, that if he went he should for certain know, that he would seize his whole Arch-Bishopric into his hands, nor would he receive him for Arch-Bishop any more, like as now the Writ *ne exeat Regno*, is used with a Penalty specified.

After this the Bishops of Winchester, Lincoln, Salisbury and Bath with several Barons, sent to him by the King, tell him, that he had troubled the King with many complaints; How that at the Parliament held at Rockingham he had (d) promised for the future, in all respects to keep and observe the Customs, and the Kings Laws, and to defend them faithfully against all Men [which was an Oath of Fidelity used in that Age, and bound him in Allegiance, by reason of his Temporalities, but no ways like the present

present Oath of Supremacy] upon which they tell him ' the King believed he would have been quiet for ' the future. But, that he had openly contravened his ' promise and Faith, by threatening to go to *Rome* ' without the Kings leave: Which was a thing alto- ' gether unheard of before, and against the usages of ' the Kingdom, that any of the Great Men, and espe- ' cially himself, should presume any such thing, and ' lest the King should either be wearied, or impor- ' tun'd with him any more, or with any other, who ' being aggrieved might follow his Example; The ' King (a) Commands that by Oath he should pro- ' mise, that he would never Appeal to the See of St. ' Peter or his Vicar, for any cause that might befall ' him, or if he did, that he should speedily depart out ' of the Kings Territories: But the Arch-Bishop per- ' sisting in his resolution to go, had not only his Arch- ' Bishopric seized; but the Pope being shewed how his ' Carriage here was resented, did not afford him either (b) *Consilium* or *Auxilium*; yet the Writers of that Age censure that as an exorbitance of the Kings power, however it may be a Document to some not obstinately to oppose their Prince.

By this Relation of matter of Fact it is evident, that in the time of these two Kings, whatever was direct- ed from *Rome* hither, or was done by the Arch-Bi- shop was to have the Kings Approbation, otherwise it was not suffered to be executed, so that the Kings allowance before made public as now used in *France* was requisite to give them a practicableness here.

It is allowed by our Historians (c) generally, that the Receiving Investitures of Churches from our Priaces, their calling of Synods, determining Causes Ecclesiastical without Appeal to *Rome*, their Translat-

*fideliter defen-
surum. Idem
fol. 39. 27.*
In this whole
Relation of
matter of Fact,
it is to be own-
ed, that it was
the personal
repair of a Peer
or great Man to
Rome, to Ap-
peal, that was
forbid without
the Kings leave,
but Appeals by
Proctors were
Anciently used
in several Cases.

(a) *Tu ut
quatenus jure
jurando promit-
tas quod nun-
quam amplius
sedem St. Petri
vel ejus Vicari-
um pro quavis
qua tibi queat
ingeri, causa
Appellari, aut
si, sub omni ce-
leritate de terra
sua recedat.*

Idem fol. 39. 36.

(b) *Idem fol.
52. 17, 53, 28.*

The Inference
from this Histo-
ry.

These are to be
understood of
matters Politic-
al and of Gov-
ernment, not
in matters of
Doctrin and
Faith.

§. 3.

(c) *Ingulpbus
fol. 500. vid.
litteras Pasche-
lis 2 Henrico 2.
apud Radmer-
um fol. 113. &
115.*

ing of Bishops, &c. have been practised here in Ancient times, the Canons and Popes reclaiming, sometimes quitted and resumed by our Kings as State Interest required.

Of the Investitures of Bishops.
This was no conferring holy Orders, but in relation to their Baronies.

(a) *Nec pro Amissione Regni sui passurum se peractis Investituris Ecclesiarum. Idem fol. 73. 13.*

Oath of Fidelity.

(b) *Gervac. Dorob. 4. 1187. Col. 1503. 36.*

Concerning the power of Legats.

(c) *Maxime ut neminemali- quando Legati Officio in Anglia fungi— permittat, si non ipsa aliqua rella exigantur, que ab Archiepiscopo Cantuariarum Cate- risque Episcopis Regni termina- ri non possint hoc fieri a Papa postularet. Idem fol. 125. 53.*

It is clear in History, that Bishops received Investitures from the King by delivery of a Staff, as an acknowledgment of a subjection to the King, at least for their Baronies which was after yielded not to be done by Lay Hands: yet King *Henry* the First at one time Writ to the Pope, that he would (a) not for the loss of his Kingdom, lose the Investiture of Churches and another time he threatned, that without doubt he would resume his Investitures, because he held them in Peace: However I do not find, that this went any further then Swearing Fealty to the King, which seems to have long continued, and which was a sufficient badge of subjection. So we find a Writ (b) from *R. de Glanvil* to the Abbot of *Bastle*, &c. wherein he Commands him on the part of the King by the Faith which he owes him, and by the Oath which he made to him, to do what he then enjoyned.

As to the Legatine Power, it is apparent by several Instances, that none Exercised any here without the Kings leave, whether by the Grant of Pope *Nicholas* to *Edward* the Confessor, I dispute not. I shall only note some few. King *Henry* the First had an Interview at *Gisors* with Pope *Calixtus*, and obtained of him, that he should Grant him all the Customs which his Father King *William* the First had in *England* and *Normandy*, and especially (c) that he would permit none at any time, to exercise the Office of Legat in *England*, unless the King upon any special Plea should require it, and the thing could not be determined by the Arch-Bishop of *Canterbury* and the Rest

of

of the Bishops of the Kingdom, and that the King should desire it of the Pope.

How the Popes Legats were received may be best known by some Instances. When *Guido* Arch-Bishop of *Vienna* Anno 1100. In the beginning of King *Henry* the First's Reign, by the Popes Authority was appointed Legat as he gave it out. *Eadmerus* saith, that it was an admiration to all in *England*, for all knew that it was (a) unheard of in *Brittain*, that any Man, except the Bishop of *Canterbury*, had the Popes power. Therefore as he came so he returned, being received by none as Legat, neither did he perform the Office of a Legat while here. The words of my Author are, --- *a nemine pro Legato susceptus, nec in aliquo Legati officio functus.*

In the Letters of *Paschalis* the Second of the 30th. of *March* and the 1st. of *April*, Fourteen Years after the returning of the Legat *Guido*, the Pope Expostulats with the King about several matters; one of which is, his admitting neither Messenger, (b) nor Letter to be received but by his leave, and the Year following *Anselm* (Nephew to the late Arch-Bishop, and after Abbot of *St. Edmundsbury*.) shewed by Letters, that he had Committed to his Administration, *Vices Apostolicas in Anglia*. This made known here, the Queen, Clergy, and Nobility gather'd in Council at *London* concluded, that the Arch-Bishop should go to the King to *Normandy*, and make known to him the Ancient Custom of the Realm, and by his Advice to *Rome*, that these new things might be Annihilated, *hac Nova annihilaret.* So the Arch-Bishop went to the King to *Roan*, and met *Anselm* there, designing his Journey for *England*, but King *Henry* not suffering that any prejudice, saith my Author, should be

Instances how the Popes Legats were received.

The Wars betwixt *France*, *Scotland* & *England* might make this caution.

(a) *Inauditum scilicet in Britannia cuncti Scientes quolibet hominum super se vices Apostolicas Gerere nisi solum Archiepiscopum Cantuariorum.* Idem fol. 58.40.

We must note, that the Pope still esteemed this as right.

(b) *Sedis Apostolicæ Nuncii vel litteræ præter Iustum Regia Majestatis nullam in Potestate tua susceptionem aut aditum promerentur, nullus inde clamor, nullum inde Judicium ad sedem Apostolicam destinatur.* Idem. fol. 113. & 116.

be brought upon the Ancient Customs of England, detained *Anselm* from going to England.

§. 4.

(a) *Videres enim rem habentem in regno Anglorum, in auctoritate, Clericum scilicet, Presbyterum tantum Gradu perfectum, Archiepiscopis, Episcopis, Abbatibus, totiusque Regni Nobilibus qui confluxerant in sublimi solio praesidere illis autem deorsum sedentes ad nutum ejus, vultu & auribus animam suspensum habentes. Gerv. Dorob. Acta. Pontif. Col. 1663. 42.* The Subjects repine at the Legats Precedence of the Arch-Bishop of Canterbury,

Soon after we find Legats sent, and particularly *John Cremensis Anno 1125. 25 H. 1.* Who being but a Priest Cardinal, yet using the Habit of a Bishop, and performing the Office on *Easter Day* in a more Eminent Chair as an Arch-Bishop, gave offence. But in a Council which he held and presided in at *London* the Kingdom took more offence, saith my Author, for then, (a) saith he, we might see a thing hitherto unheard of in the Kingdom of England. A Clerk, only having the Degree of a Priest, preside in a lofty Throne above the Arch-Bishops, Bishops, Abbots and all the Nobles of the Kingdom that Assembled there, they sitting below with Countenances and Ears attending his pleasure.

In this I take not so much notice, that he assumed such a place, that being due according to the Dignity of the Person he Represented, and is no more to be wondered at, then that the Lord *Cromwell* as Vicar General had place before the Arch-Bishop of *Canterbury*; but I cannot but observe, that it was looked upon as such a Novelty, and a thing not used before, even as the Vicar Generals place was in the latter Ages: And it is supposed by some to be the first President of any Clergy Mans having Precedence here of the Arch-Bishop of *Canterbury*, who was Styled, *Alterius Orbis Papa*, as having *Vices Apostolicas* here.

But in *Anno 1127.* To take off this Envy, the Arch-Bishop of *Canterbury* *William Corbet* was declared Legat, and in *May* following held a Council at *Windsor*, wherein (b) he presided as Legat of the Apostolic See, and it must be owned, that tho' these first three Kings after the Conquest Contested with

Popes

(b) *Cui praesidet sicut Apostolica sedis Legatus Florent. Wigorn. An. 1126. 1127.*

Popes in these matters, yet afterwards Kings yielded more to the Canons of the Church.

Anno 1138. 3 Steph. Albert or Alberic Cardinal of Hostia was the Popes Legat, and Consecrated Theobald Arch-Bishop of Canterbury, and called the Clergy to a (a) Colloquium by Apostolic Authority, by which it appears, that the Canons of the Church now obtained, and the King assented to the powers the Legat had, so that what was Decreed had the Kings Allowance. In (b) this Council he Commanded the Prior and Convent of Canterbury to choose such an Arch-Bishop, whom the Authority of the Holy Canons in nothing might obstruct, and to whom the Bishops of his Province likewise ought to submit, and to whom the King neither might, nor ought justly to deny his Assent, and that if any (c) injured any Ecclesiastical person, and did not give satisfaction, after three Admonitions he might be Excommunicated, and that none besides the Pope, unless the danger of Death were Imminent, might enjoin the manner of his final Penance, which my Author * says was the first Canon that was made whereby any thing done in England was referred to Rome; but of this I doubt.

Anno 1139. 39 H. 1. Pope Innocent the Third Conferred the Legatine power upon Henry Bishop of Winchester, King Stephens Brother; his Faculties (d) were Read at a Council he called at Winchester bearing Date March the 11th.

There being some differences betwixt the Arch-Bishop and Monks of Canterbury, they were referred from Rome to his Decision, so that he caused both Parties the second time to appear before him 1143. as Legat, and Commanded (e) Arch-Bishop Theobald

§. 5.

Further power exercised by Legats.

(a) Geru. Dorob. Col. 1346. 58.

(b) Endmerus. fol. 24. 11.

Here is to be noted, that the Kings Assent was required.

(c) Geru. Dorob. cap. 9. G. l. 1348.

* Sir Roger Twissden ut supra.

(d) Malmibury fol. 103. a. 31.

Disputes betwixt the Arch-Bishop of Canterbury and the Legat.

(e) Willi. Thorn Col. 1853. 32.

to restore one *Jeremy* whom he had removed. By these and other Carriages, there grew great distaste betwixt these two great Prelates. The Arch-BiNop prohibited (a) *Winchester* all Ecclesiastical Functions tho' he were the Popes Legat, and both apply themselves to the Pope: Whence, a Learned (b) Person saith, our Historians do fetch the use of Appeals to *Rome*, tho' it may be Ancienter.

(a) *Jo. Hagulst.*
Col. 27. H. 4.

(b) *Sir Roger*
Twisden, Vindis.
p. 27.

§. 6.

(c) *Willi. Thome*
Col. 180. 44.
J. Hagulst Col.
273. 61. Anno
1145.

The Arch-Bishop of *Canterbury* Created
Legatus Natus.

Greater sub-
jection to the
Pope.

(d) *De Officio*
Legati cap. 1.

(e) *Hoveden*
Anno 1189.
117.

These two great Prelates being before *Lucius* the Second, Anno 1144. the Bishop of *Winchester* (c) was dismissed his Legatine Commission, and the Pope finding with how great difficulty the Ecclesiastic Affairs of the Kingdom could be managed by any Legate, without the Arch-Bishop of *Canterbury*, Created him and his Successors *Legati Nati*, by which such things as the Arch-Bishops did before, and which seemed to Interfere with the Popes plenitude of power, the exercise of which the Arch-Bishop was not so easily to be divested of, he might be said to make use of by a Legatine power.

After this our Histories are full of Appeals to *Rome*, and of the Authority Exercised by Legats, and we find some things allowed by the Decrees of Popes to be Transacted by the Arch-Bishop of *Canterbury* *quâ Archibishop* and others *quâ Legate*, as appears in the Decretals where (d) *Alexander* the Third resolves, that the Arch-Bishop could not hear, *Jure Metropolitico*, matters Episcopal, that came not to him *per Appellationem*, that is, by a Legal way, but *Jure Legationis* he might, such as were brought unto him only *per quarimoniam*.

The Name of *Legatus a Latere*, is first found in our Historians to be given to *Johannes* (e) *Anagninus* *Cardinalis* Anno 1189, and also the power of these

Legats

Legates was great, yet it is manifest, that what they did was only so far as they had the Kings permission; so that in some respects it may be said, whatever they did in Visitations and other matters, was by the Kings Authority and sufferance, for which purpose we have that Memorable Letter (a) from *Henry Chichelsey* to King *Henry* the Fifth, which I shall give in the words it was Writ in. 'Be Inspection of Laws 'and Chronicles, was there no Legate a Latere sent 'into no Lond and especially into your Reagm of *Eng-* 'land, witoute great and notable cause. And that 'when thei came, after thei had done her Legacie, 'abiden but litul wyle, not over a yer, &c. And 'yet evir that, was trefyde with or he cam into the 'Lond, whon he shold have exercise of his power, 'and how mych shold be put in Execution, an a ven- 'ture after he had bee reseyved, he whold have used 'it too largely to great oppression of your peple.

The Style of Legates a Latere when first used.

(a) Vita Hen. Chichelsey ab Ant. Duck Edit. 1617. p. 79.

The Legatines power by our Kings permission, was exercised in most Cases.

A further proof that Legates here could do nothing contrary to the Laws and Customs of the Land appears in this particular I shall now recite.

§ *Henry Beaufort* the Rich Bishop of *Winchester*, who was Cardinal of *St. Eusebius*, Son of *John a Gant*, and so of the Kings Blood, and was employed by *Martin* the Fifth as General against the *Bohemians*, and to that end Erected his Cross Anno 1429. 8 H. 6. was sent Legate into *England*, and was made one of the Kings Privy Council, and is noted to be the first that of that Order was so Admitted. Yet we find that he was to (b) make a protestation, 'that as often as any matter, cause, or business, did concern the King, his Kingdom, or Dominions on the one part; and the Apostolic See on the other, which was to be Com- muned and Treated of in the Kings Council the

The first Cardinal that was a Privy Coun- cellor.

(b) Rot. parl. 8 H. 6. N. 17. His protestation to absent him- self when mat- ters of difference bewixt the King and Pope were de- bated.

' Cardinal should absent himself, and no ways be present at the Communication of the same.

It further appears how Legates Executed by the Kings Allowance or Connivance the powers given them by the Pope; because if they did otherwise, no person, being the Kings Subject, was so great, but he was forced to gain his pardon for the Offence, if he Committed any.

(a) Rot. Parl.
10 H. 6. N. 16.
He Petitions
for pardon if he
had done any
thing against
the Laws, being
the Kings Sub-
ject.

Hence we find, that even this (a) great Cardinal caused a Petition to be Exhibited in Parliament, ' I hat he the said Cardinal, nor none other, should be pursued, vexed, impleaded, or grieved by the King his Heirs or Successors, nor by any other person for ' cause of any provision, or offence, or Misprision done ' by the said Cardinal against any Statute of provisi- ' ons, or per cause of any Exemption, Receipt, ac- ' ceptation, admission or execution of any Bulls Pa- ' pal to him in any manner.

The Inference
hence, that
what the Popes
Legats did in
Visitation, or
otherwise, was
by the Kings
superadded Au-
thority.

By all this I hope the Ingenuous Reader will find, that what Visitations were made of the University of Oxford by the Popes Legats (whereof I shall give several Instances in the following Section) doth no ways Infer, that thereby the Kings power of Visiting was exauctorated, but that whatever they did was in subordination to the Kings pleasure, or as allowed by his Laws.

§. 8.
Concerning the
Arch-Bishop, or
Bishops Visita-
tions.

The other Visitors of the University were either the Arch-Bishops of *Canterbury* as Metropolitans, or the Bishops of *Lincoln* as Diocesans, or the Local Visitors; I shall now endeavor to prove, that whatever they did in Visitation, as well as other External Regiment, was by order, allowance, or connivance of the Kings of *England*; so that though I shall hereafter produce their Visitations, yet it will appear that

that the Kings Supreme Authority was thereby no ways prejudiced.

I need not here enter into the claims our Ancient Kings made to the Investitures of Bishops, having touched it before, nor how for their Baronies Homage is required of them. It is most manifest, that our Kings have Interposed their Authority even in allowing or dis-allowing of their persons.

This is clear by the Speech of *Wolstan* (a) at the Confessors Tomb, that he had compelled him to take the Pastoral Staff. So King *Edward* the Third wrote to Pope *Clement* the Sixth, that his Progenitors long since upon Vacancies, by their Kingly Right, conferred the Cathedral Churches freely on fit persons, and afterwards at the Instance of the See of *Rome* under certain Forms and Conditions, granted that Elections should be in the said Churches by their Chapters.

Bishops allowed by the King.
(a) *Alfred de Miraculis Edw.* Col. 406. 37.
Here we may note, that the Alteration was by agreement.

I need not insist upon the Kings of *England* seizing the Temporalities of Bishops into their hands, and so Suspending them a *Beneficio*; for those who will take the pains to look into Mr. *Pryns* Historical Collections will find many Instances thereof.

§. 9.

¶ The Statutes or Provisions, the complaints against the Popes Provisions in *Mat.* (b) *Paris* and the Parliaments of King *Edward* the Third, and *Richard* the Second clear this point: And when *Anno* 1349. the Pope wrote to the King, that he would not hinder or permit these to be hindered to receive the Benefices, who were by the Court of *Rome* by Bulls promoted. The King Answered, that he well would accept those Clerks, so provided which were of good condition, and were worthy of Promotion, but others he would not. If then the very admitting the persons to the Dignity and Office were in the Kings power, as by the *Conce desire* is well known, it cannot be doubted, but that the Exercise of their Government, I speak not here of their Sacerdotal Function, was according to the Kings Laws.

(b) *Anno* 1240. fol. 532. 43.
fol. 549. 18. 22.
Anno 1246. fol. 669. 9.

We may therefore now consider how far the Ecclesiastical Canons were allowed by our Kings, and how called his Laws. *Ralph de Diceto* (c) observes, that our Kings did in such sort follow the Ecclesiastical Canons, as they had a care to

§. 10.
How far the Canons were allowed in England.
(c) *An.* 1175. Col. 597. 21.

Conserve their own Rights : hence it is, that in the Saxon Laws we find the Kings extending their Commands to the enjoying of those things in Ecclesiastical matters, which by

(a) *Cap. 5. N. 6.* Canons of Councils were agreed to, as Sir Roger (a) *Twissden* hath summed up in Ten particulars. In one of which King

(b) *L. L. Aluredi Alfred* (b) reserves to himself the liberty of dispensing even with the Marriage of Nuns. In another it appears, that the Kings caused the Clergy of their Kingdom to meet in Council, and sometimes presided themselves in them, tho' the Popes Legat were present, as may be seen in Sir Henry Spelman's Councils, Page 292. 293. 189. & *passim* *Ibid.* *vita Lanfranci* C. 6. Col. 1. pa. 7. Florent. Wigorn. 1070. p. 434.

(c) *Twissden* It is likewise certain, that before (c) William the Conquerors time, the English Bishops had no Ordinary Courts distinguished from the Lay, but both Secular and Ecclesiastical Magistrates sat and Judged together: but he finding these proceedings (d) not good, nor according to the precept of the Holy Canons, did by his Charter make a distinction of the Courts, that such as were Convented by the Bishop should not Answer according (e) to the Hundred, but according to the Canons and Episcopal Laws. So that in this appears the Foundation of the Tryals in Ecclesiastical Courts, according to the Ecclesiastical Laws, which yet by our Lawyers are called the Kings Laws.

(d) *Non bene neque secundum Sanctorum Canonum precepta.*

(e) *Non secundum hundred sed secundum Canones & Episcopales Leges, &c.*

§. 11.
The Kings Secular Courts determined what matters were to be tryed in Ecclesiastical Courts.
(f) *Lib. 5. de exceptionib. cap. 15. tit. 3. fol. 412. a.*

And it further appears, that in Controversies betwixt parties where it hath been disputable, whether the Tryal of them appertained to the Kings Ecclesiastical, or Secular Courts; The Kings Secular Courts have ever been Judges, to which Court the cause did belong, therefore *Brañon* (f) saith, *Judex Ecclesiasticus, cum prohibitionem a Rege suscepit, supersedere debet in omni casu, saltem donec constiterit in Curia Regis ad quam pertineat Jurisdictio, quia si Judex Ecclesiasticus asserere possit an sua esset Jurisdictio, in omni casu indifferenter procederet, non obstante Regiâ prohibitionem.* Which is agreeable to what we find King William the First did in a Council at *Illibon* in Normandy Anno 1080. when by the advice of both the States Ecclesiastic and Secular, he did settle many particulars to belong to the Cognizance of the Spiritual Judges, and concludes, that if any thing were further claimed

by

by them, they should not enter upon it (a) till they had shewed in the Court of the King, that the Bishops thereupon ought to have it belong to them.

(a) *Donec in Curia Regis monstrant quod Episcopi inde habere debeant.*

Whoever desires to be satisfied in the Jurisdiction of the Kings of England in Ecclesiastical matters, may find an Abridgement of them in Sir Roger Twisden (b) enforced with sufficient Testimonies out of our most Authentic Historians in Eighteen particulars.

(b) *Vindicat.*
c. 5. N. 17.

§ Upon the whole matter we may conclude, that what was done by Archiepiscopal or Episcopal Visitation of the University, was by the Kings Authority; so that tho' we find not that by Immediate Commission the Kings of England Visited before King Henry the Eighth's time, yet we have sufficient grounds to Judge, that whatever was done, was by the Kings power, and Authority. Therefore Sir Edward (c) Cooke lays it down for a Rule, that as in Temporal Causes, the King by the Mouth of the Judges in his Courts of Justice doth Judge and determin the same by the Temporal Laws of England, so in Causes Ecclesiastical and Spiritual by his Ecclesiastical Judges according to the Ecclesiastical Laws of the Realm; and that so many of the Ecclesiastical Laws as were proved, approved, and allowed here, by and with General Consent, are aptly and rightly called the Kings Ecclesiastical Laws of England; and whosoever denyeth this, denyeth the King to have full and plenary power to deliver Justice in all Cases to all his Subjects, without which he were not a compleat Monarch or head of the whole and entire Body of the Realm according to the words of the Statute, (d) 'that the Kingly Head of this Body Politic is Instituted and furnished with plenary, 'whole and intire Power, Preheminence, Authority, Prerogative and Jurisdiction, to render and yield Justice and final 'determination to all manner of Folke, Resiants or Subjects 'within the Realm in all causes, matters, debates and contentions happening to occur, insurge, or begin within the 'limits thereof, &c.

§. 12.
The application of these Historical Collections.

(c) *Cawdryes Case 5 Reports p. 8. b.*
How the Temporal and Ecclesiastical Courts were subordinate to the King according to the Opinion of our Modern Lawyers.

(d) *Stat. 24 H. 8. c. 12.*
The King the Fountain of Justice.

It must be likewise considered, that whatever power our Kings Exercised in Ecclesiastical Affairs, they never claimed any in those things the School-men call *Ordinis*, as the Administration of Sacraments, Celebrating Divine Offices, &c. but

§. 13.
In what particulars our Kings claimed not Ecclesiastical Administration.

This is Sir
Roger Twissden's
observation.

but in that which is called *Jurisdictionis*; and that being either Internal, where the Divine by persuation, wholsom Instructions, Ghostly Counsel, and the like, convinceth the Conscience, whereby it is obedient: or External, where the Church in *Foro exteriori* compels the Christians obedience. As to the first and second, none of our Kings, either before or since the Reformation, took upon them at all to meddle, either by assuming to themselves a power of Preaching, Teaching, Binding or loosing in *foro Anima*, Administring the Holy Sacraments, Conferring Orders, &c. But they took upon them the Ordering of such things as were of outward Policy of the Church, as what Men were fit to Exercise them, and what subjection the Subjects should yield to Decrees and Constitutions made abroad, and what Doctrins were publicly to be Taught, which might conduce to the quiet Peace and Tranquility of the Subject, and their living in Piety and Vertue.

§. 14.
How the Popes
obtained greater
powers after
the Canon
Laws were
owned here.
(a) *Walsingham*
ad Ann. 1297.

It is further to be noted, that the Popes power was enlarged after the Canon Law was received, more than it had been before; but if we believe *Walsingham* (a) it was not Read in our Universities publicly till the 25th. of Edward the First, by one *Simon* a Monk of *Walden*.

The Popes Jurisdiction in four particulars by the Canons.

It is likewise to be noted, that altho', as I have shewn before, the first Race of our Kings did frequently oppose some Rights the Popes claimed by Canons, yet within the compass of an Hundred Years after the Conquest, or little more, the Court of *Rome* obtained four great points of Jurisdiction: First of sending Legats into *England*. Secondly drawing Appeals to *Rome*. Thirdly, the Donation of Bishoprics and other Dignities in the Church. Fourthly the Exemption of the Clergy from Secular Power. Notwithstanding all which, several Kings reassumed their Rights and Jurisdiction as occasions offered, until the Reign of King *Henry* the Eighth, as the Statutes of *Mortmain*, Provisoers, &c. do manifest.

§. 15.
The Kings Supremacy asserted by King
Henry the 8th.

But in King *Henry* the Eighth's time, a Total Rout was given to them all. In the Twenty fourth of his Reign all Appeals to *Rome* were taken away, and Established in the King, and all Sentences made or to be made within *England* declared to be Authentical, notwithstanding any Act from *Rome*. The grounds of which Act are set forth in the (b) Preamble.

(b) Stat. 24 H.
8. c. 12.
Parag. 1.

'That

'That this Realm of *England* is an Empire Governed by one Supreme Head and King, having Dignity and Royal Estate of the Imperial Crown of the same, unto whom a Body Politic Compact of all sorts and Degrees of People, divided in Terms by Names of Spirituality and Temporality, been bounden, and own to bear next to God a Natural, and humble obedience. Then follows the plenitude of the Kings power, as before I have related, after which follows, 'That the Body Spiritual hath power, when any cause of the Law Divine happens to come in question, or of Spiritual Learning, that it was declared Interpreted and shewed by that part of the Body Politic called the Spirituality, without the Intermeddling of any exterior person, or persons [by which the See of *Rome* is intended to be utterly Excluded, and all Canons of Council likewise not allowed of by the King and his Laws] to declare and determin all such doubts, and to Administer all such Offices and Duties, as to their Rooms Spiritual doth appertain, — and the Laws Temporal for Tryal of property of Lands and Goods, and for the Conservation of the people of this Realm in Unity and Peace, without Rapine and Spoil, was and yet is Administred, Adjudged, and Executed by sundry Judges and Ministers of the other part of the Body Politic called the Temporality, and both the Authorities and Jurisdictions do conjoyn together in the due Administration of Justice, the one to help the other.

By which it is easie to infer, that this Statute exterminates and abolisheth all Forreign power, so that whatever before this was Transacted here by the Popes or their Legats, is now to be declared and determined by the King, or such as by Law are appointed to hear and determin such matters under him.

In the Twenty-sixth of the same King, it is enacted, 'That the King, his Heirs and Successors shall have full Power and Authority from time to time to (a) Visit, Repress, Redress, Reform, Order, Correct, Restrain and Amend all such Errors, Heresies, Abuses, Offences, Contempts and Enormities, *whatsoever they be*, which by any manner of Spiritual Authority or Jurisdiction ought or may lawfully be Reformed, Repressed, Ordered, Redressed, Corrected, Restrained, or Amended, most to the pleasure of Almighty God, the increase of Virtue in Christs Religion, and for the Conservation of the Peace, Unity and Tranquility of this Realm, any Uses, Customs, Forreign Laws, Forreign Authority, Prescription, or any thing or things to the contrary hereof notwithstanding.

It is known, that the Title of Supreme Head of the Church, given by that Act to the King his Heirs and Successors was Repealed by Queen

The Lawyers Judge this Statute not to be Introductory of any new power but declaratory of the Ancient Rights of the Crown.

This Statute was made to exclude the Popes power which King Henry the 8th rejected.

§. 16.

The Kings power of Visiting, &c.
(a) Stat. 25 H. 8. c. 1.
The Kings power of Visiting.

The Title of
Supreme Head
changed.

The restoring
of Ancient Ju-
risdiction.

Stat. 1 Eliz.
Parag. 17.

Parag. 18.
The Kings
power in Eccle-
siastical matters.

25 H. 8. c. 21.
Parag. 29.
The King Su-
preme Visitor.

Queen *Mary*, and was never restored: but in the First of Queen *Eliza-
berh* all the powers given by the Act of 26 H. 8. are restored to the
Crown under the Name of Supreme Governor.

For in the first of Queen *Elizabeth* such Ancient Jurisdictions over the
Estate Ecclesiastical are restored to the Crown, as by Queen *Mary* had
been Repealed, and all Foreign powers repugnant to the same are abo-
lished, I shall only insert what relates to the present matter. Parag. 17.
It is thus Enacted, *That such Jurisdiction, Privileges, Superiorities, and
Prebeminences Spiritual and Ecclesiastical, as by any Spiritual and Eccle-
siastical power, or Authority hath heretofore been, or may lawfully be exercis-
ed, or used for the Visitation of the Ecclesiastical State, and persons, and for
Reformation, Order, and Correction of the same and all manner of Errors,
Heresies, Schisms, Abuses, Offences, Contempts, and Enormities shall for
ever by Authority of this present Parliament be United and Annexed to the
Imperial Crown of this Realm.* And in the 18th. Paragraph, *The Queen,
her Heirs and Successors, shall have full Power and Authority by Letters
Patents under the Great Seal, to Assign, Name and Authorize, &c. such
person or persons, &c. as the Queen her Heirs and Successors shall think meet,
to exercise, use, occupy, and execute under them, all manner of Jurisdictions,
Privileges, and Prebeminences in any wise touching or concerning any Spiritu-
al or Ecclesiastical Jurisdiction within their Dominions, to Visit, Reform,
Redress, Order, Correct, and Amend all such Errors, Heresies, Schisms,
Abuses, Offences, Contempts, and Enormities whatsoever, which by any
manner of Spiritual or Ecclesiastical Power, Authority, or Jurisdiction can
or may lawfully be Reformed, Ordered, Redressed, Corrected, Restrained or
Amended, &c.*

Which seems to me, notwithstanding Mr. *Pryn*s exceptions, clear by
another Act of Parliament, the words of which are, — *Provided that
the said Arch-Bishop of Canterbury, or any other person or persons, shall
have no power or Authority, by reason of this Act, to Visit or Vex any Mona-
steries, Abbys, Priories, Colleges, Hospitals, Houses or other places
Religious, which be or were Exempt before the making of this Act, &c. But
that Redress, Visitation, and Confirmation shall be had by the Kings High-
ness, his Heirs and Successors, by Commission under the Great Seal to be di-
rected to such persons as shall be appointed requisite for the same.*

In fine whoever considers the Accumulated power of our Kings ~~may~~
own a fortiori, that whatever Visitatorial Power was exercised be-
fore King *H. 8th.* time, was by the Kings allowance, and all since is
solely derivative from the King as Sovereign Monarch and Supreme
Governor.

S E C T. II.

Who Exercised Jurisdiction, by way of Visitation or otherways, over the Universities, from the 11th. of King John, to the Year 1390. 14 Ric. 2.

§. 1.

HAVING shown in a General way what Prerogatives the Kings of *England* have exercised in Ecclesiastical Affairs before the Reformation, and how all the power the Pope claimed or exercised in point of Government is now by our Laws Invested in the Sovereign. I shall proceed to give an Account, how till the Reformation the University was Visited punished and governed by the Arch-Bishop of *Canterbury*, some Popes, Legats, or the Bishop of *Lincoln* their Diocesan: Yet all these were by the appointment, Approbation, or consent of the respective Kings; the most evident *Vestigia* of whose Supreme power appeared, in the admitting, or making void exemptions and privileges even granted by the Apostolic See; so that it is not to be thought strange, that since the Reformation (the whole Ecclesiastical Government being declaredly derivative from the Crown, and the Authority of the Pope being by the Laws in force devolved upon our Princes) they have exercised a more Despotical Authority over the Universities then over other Incorporations.

¶ The First Instance I find of the Popes Suspending and the Kings Recalling the Lectures in the University was *Anno* 1209. the 11th. of King *John*; The

The Pope and his Legate Suspend officers.

Y

occa-

(a) Wendover
sub. Anno 1209.
Ms.

(b) Wood
Antiq. Oxon.
lib. 1. fol. 59.

(c) In Turri
Schol. in pixide
P. P. fasci. c. 12.
N. 2. & 3.

* Magistri vero
qui post Schola-
rium recessum
irreverenter
legerunt Oxo-
nia, suspenden-
tur per Trien-
nium ab officio
Legendi. Ibid.

Inferences from
this History.

occasion of which in short was this. (a) Upon this mis-information of the Burgesses of Oxford to the King, then at Woodstock, that a Clerk had killed a Woman, two or three Innocent Clerks were seized and Executed, (b) upon which severity, and the detestation of the Burgesses Malice, the Masters and Scholars removed out of the Inhospitable Town; and Anno 1210. The Pope Interesting himself because they were Clerks, Commands the Scholars to Read no Lectures, and Anno 1213. sends over Nicholas Bishop of Tusculum his Legate, who Anno 1214. (c) published his Bull at Ramsey the 7th. of the Kalends of July. In which besides the severe punishment inflicted on the Burgesses, it is plainly expressed, that the Bishop of Lincoln, the Arch-Deacon of the place, his Official, the Chancellor, or any other Deputy of the Bishop, should see to the performance of what was enjoined; and those * Masters who Irreverently, after the recess of the Scholars, had Read Lectures contrary to the Popes Orders, should be Suspended from the Office of Reading for three Years. But I find, that the King gave leave to all to return to the University, and upon this occasion, being willing to shew some special favor to it, and prevent the like mischiefs for the future, observing where in their privileges were defective, Grants that the Chancellor should have Cognizance of Causes where one party was a Scholar, or his Servant.

In this account it may be observed; that for contempt of the Popes Order the Legate Suspends the Offenders for three Years, that the King Grants the leave for their return, and gives them new privileges.

¶ Anno 1238. 13 H. 3. Cardinal Orho came to Visit the University of Oxford as Legate a Latere; But had an unfortunate Journy, for the Scholars coming in great numbers to pay their respects to him, the uncivil Porter (a) would not permit them to enter till they forced their passage, and a Scholar going to the Legates Kitchen, a Ladle full of scalding broth was cast upon him, which the Scholars took to heinously, that one of them Slew the Legates Brother, and the Legate thereupon Fled with some danger to his person. Of all which the King being Informed, sent Peter (b) de Rupibus Bishop of Winchester, Ralph Nevil Bishop of Chester then Chancellor of England, and others, who met the Day after May Day, in the Church of St. Fridiswyde, (c) and Suspended the University from Celebrating Divine Service, and from performing their Exercises and usual Lectures. And the Legate Excommunicated the University, upon which many left the University, but the King (d) Commanded that none should depart without his leave, and several were Imprisoned and their Goods (e) seized into the Kings Hands but by the 15th. of May, upon (f) Sureties given for appearing, most were set at Liberty, and their Goods restored, and those upon this occasion Imprisoned in the Tower of London were released, and the Sheriffs (g) of several Counties had the Kings Writ to return the Names of those that had retired from Oxford, and of the Sureties of those that were to abide the Tryal, and other (h) Writs Issued out to the Chancellor and the Arch-Deacon of Oxford, to warn all others that were in that Riot to return to the University to expect the Ecclesiastical Absolution for their faults, and the Legate summoned the (i) Arch-Bishop of

§. 2.
Cardinal Orho
Visits by Lega-
tine Authority.
*Mat. Paris ad
Annum 1238.*
(a) *Chron. Ab-
don dlf.*

(b) *Pat. 22 H. 3.
M. 7.*
The Kings
Commissioners
Interdict Di-
vine Service.
(c) *Florileg. sub
hoc Anno.*
And Suspend
Lectures and
Exercises.

(d) *Pat. 22 H. 3.
M. 15. Cl.
22 H. 3. M. 15.*
(e) *Id. fol. 90. a.*

(f) *Cl. Pat.
22 H. 3. M. 7.*
The King re-
calls the Stu-
dents.
(g) *Cl. 22 H. 3.
M. 13.*

(h) *Gl. 22 H. 3.
M. 13.*

(i) *Mat. Paris
sub An. 1238.*

York and all the Bishops to consult about this Matter.

(a) Wood
Antiq. fol. 91. a.
The Legate
gives leave to
the Students to
return.

Anno 1239. 14 H. 3. The Legate (a) sent an account likewise to the Pope and Cardinals, and after dismissing the Council the Legate Writ to the Chancellor, that he Exhorting the Academians to repentance should give them all leave to return to the University from whence they had been absent above a Year, and had been Interdicted of their Exercises, Lectures, &c. And the punishment Imposed was,

(b) Idem fol. 43.
a.

Appointeth a
Penance.

that the Clerks (b) should go from St. Pauls to Duresme House on Foot, and after that all the Academians should go bare Foot without Caps or Mantles and should humbly ask the Legate Pardon: which being done the Interdict was taken off, and the Scholars returned to Oxford to attend their wonted Lectures and Exercises; Thus were they punished, there being Murther of the Legates Brother in the Case, the Bishop Robert Groshead defended the Clerks, Insisting, that the Legats People gave the occasion.

However, even in this case when the Pope was so much concerned for the affront done to his Ministers, yet we clearly find, that the King by his Commissioners Suspends the University from Celebrating Divine Service and performing their Lectures: Which are sufficient badges of his prerogative in punishing Offenders, in such manner as it was done, by his Commissioners.

S. 3.
The Bishop of
Lincoln the
Ordinary Visitor
before Oxford
was made
a Bishops See
by King Hen. 8.

I now proceed to shew, that the Bishop of Lincoln was the Ordinary Visitor. In the Visitation by the Bishop of Tusculum it appears, that the Legate Impowered the Bishop of Lincoln, or his Arch-Deacon, or the Chancellor, or others the Bishops Deputies

to

to see to the performance of what he had Decreed. By which some show of Jurisdiction was left to him who was the Diocesan, and by the Canons of the Church had the Visitation in Ordinary of all under his Jurisdiction, which by succeeding Councils I shall shew * hereafter was his Right, and declared such, even without Appeals from him, or any Exemption, and that they executed it appears by many examples in the Bishop of *Lincolns* Register, yet by the Instances following we find it, was often disputed, especially if they attempted to do any Exorbitant Act.

Robert Grossthead Bishop of *Lincoln* (a) a singular Patron of the University being Dead, *Henry Lexington* Succeeded, who not being content with the usual power exercised by his Predecessors designed to enlarge his Jurisdiction, so that the University was forced to defend it self by shewing the Bull of Pope *Innocent* the Fourth, granted to them a little before his Death, Dated at *Avignon* (b) the 5th. Kalend of *October*, the 12th. of his Pontificate, wherein he Confirms and Defends their Liberties and Immunities granted to them by Bishops, Kings, Noble-men and others; A 2d. was (c) granted by the said Pope directed to the Bishops of *London* and *Salisbury*, for the Conservation of the persons, Liberties and Immunities of the University; A 3d. Dated 11th. *November* the same (d) Year Confirming their Immunities Liberties and Customs; And a 4th. Dated (e) the same day and place in Confirmation of their Statutes, and this was Confirmed after by the Bull of *Sixtus* the Fourth.

* Cap. 4. Self. 4. §. 10.

(a) Wood: *Antiq. lib. 1. fol. 105.*

The Popes Bulls of Liberties to the University.

(b) Wood *Antiq. A. fol. 48. b. and in Harus de Privilegiis fol. 4. a.*

(c) A. & D. 24. a.

(d) *Farus de privil. 4. A. & D. 23. b.*
(e) *F. F. 75.*

§. 4.

The Bishop of
Lincoln com-
plaint to the
Pope against
the disobedi-
ence of the
University.

* *Lib. Taxation*
per Dominum
Norwyck, &c.

Bulla 14.

The Pope con-
firms the
Bishops claim.

(a) *Chron. Osuit*

sub An. 1258.

The Bishop
Vilits.

But it seems, that the Bishop of *Lincoln* complain-
ed to *Alexander* the Fourth, Successor to *Innocent*,
that the Clerks in the Castle of *Oxford* refused to o-
bey the Authority his Predecessors had Enjoyed: up-
on which the Pope, by his Bull Dated * at *Naples*
the 5th. of the Kalends of *February*, 10. Pontificatus
Decreed, that the Bishop might Exercise his Autho-
rity, notwithstanding any Letters to the contrary
heretofore obtained, from the Apostolic See, or
to be obtained unless full mention of the present
Bull was Inserted. And it (a) appears Anno
1258. 42 H. 3. That this Bishop *Lexinton*,
made an Inquisition into the Rights of the Universi-
ty, and by his Delegates examined in the Chappel
of the Infirmaryes the Instruments and Charters of
their Possessions and Rights appertaining to the
Church of *Osney*, concerning the Church of *St. Greg.*
Situated in the Castle of *Oxford*.

Bishop of *Lin-*
coln changeth
the Lectures
and Statutes,
and complaint
of it is made to
the King.

(b) *Venerunt*
ad St. Alban.

quidam Magi-
stri Oxonia

Circiter 9

Aniſta qui
quapula voce

Reposuerunt
querimoniam

de Episcopo

Lincolniensi

qui contra Statuta Universitatis Antiqua & Approbata nitebatur Libertates
Scholarium enervare, & Statutus est dies responsionis ad instantiam Magnum Parliamentum. Mar.
Paris ad An. 1257.

This Bishop *Lexinton* persisted in this Claim of
Jurisdiction, so that on the 17th. of the Ides of *March*
about Nine Masters of Arts came to *St. Albans* where
they made their complaint before the King in the
Chappel of *St. Oswin* against the Bishop of *Lincoln*,
(b) that he endeavored to enervate the Liberties of the
Scholars against the Ancient and approved Statutes
of the University; and a Day for Answering was ap-
pointed at the Great Parliament, that the Reasons
of both Parties being heard they might be appeased.

It appears not how the matter was determined,
yet it is manifest that they had resort to the Kings
Authority in the matter, and his referring it to the

Par-

Parliament is no more then as in Arduous Causes the Kings refering a matter to his Supreme Court of Judicature the House of Lords, which give the Kings Judgment, and not, as Mr. *Pryn* mistakingly or willfully applys all such things to the Sovereign power of the two Houses; Tho' the King Anno 1257. 41. H. 3. composed the business, yet the Bishop kept his Official there, that * when any Statutes were made by the Chancellor and University, he might see that the Bishops Authority was not Infringed, as we find that *David* Arch-Deacon of *Derby* Canon of *Lincoln* did that Year the 43th. of the Nones of *June* enter his Protest, that they should do nothing in prejudice of the Bishop or his Successor.

* *Annales Ms. Buxtonenses Ms.*

Here we cannot but observe, that the Statutes are changed by a Visitor, and how the Members of the University finding themselves aggrieved by their Ordinary Visitor, have recourse to the King as their Supreme Judge and Visitor: Yet the Bishop of *Lincoln* as Diocesan insists on his Privilege to see that no Statutes were made without his Approbation, all which power our Kings now have.

The first Visitation I find of the University by the Arch-Bishop of *Canterbury*, was (a) Anno 1278. 6 E. 1. At which time *Stephen* Bishop of *Paris* Visited that University. But this seems designed principally to Refute and Condemn some Errors crept into the Schools, which in Theology, Philosophy and Logic he disputed against, and with the consent of the Masters Regents and non Regents, he Exploded and Condemned with this Censure, viz. That if he were a Master of Art that Defended them, he should be Degraded, and if a Bachelor of Art, should

§. 3.
The Arch-Bishop of *Canterbury* Visits.
(a) Wood
Antiq. Oxon.
lib. 1. fol. 205.
In hac Visitatione Academicas ipsas Metropolitanica Auctoritate ingressus est. M. Parker Antiq. Eccles. Brit. Fol. 198.

The Arch-Bishop appoints Statutes to Degradate and Incapacitate Students from taking Degrees.

§. 6.

* *Havus de pri-
vil. Oxon. fol.
13. b.*

*Oliver Sutton
Bishop of Lin-
coln Questions
the Chancellors
Authority.*

(a) *In Turri.
Scholar. pix. 2.
N. 5. 6, &c.*

should be incapable of any other Degree; and should be Expelled. From hence we may find some Footsteps of a Visitors Incapacitating some, besides Degradating and Expelling.

Anno 1281. 9 E. 1. The Chancellor of the University having assumed some Ecclesiastical * Rights and used to take Cognizance of the faults of Clerks that belonged to the Court Christian, *Oliver Sutton* being made Bishop of *Lincoln* exacted an account of these things from the Chancellor and Proctors, intending to Deprive the (a) University of that Right: And after some debate, it was agreed, that when he appointed a Visitation of the University, if any Masters, Scholars or any Members of the University were faulty in any thing which appertained to the Ecclesiastical Court, they should be referred to the Chancellors Disquisition and Sentence, but in greater faults, or where any submitted not to the Chancellors Sentence, their Names should be sent to the Bishop who promised not to promote them till they had satisfied the Chancellor. However I find (b) that the Regents and non-Regents in Convocation declared, that the University was in full Possession of certain Rights and Customs there expressed.

(b) *Wood fol.
128.*

(c) *Wood fol.
125. b.*

(d) *Turri.
Scholar. pix. 2.
M. 2.*

The Arch-Bishop of *Canterbury* defends the University against the Bishop of *Lincoln*.

And this I suppose they were (c) encouraged to do, because the Year foregoing, viz. 1279. (d) *John Peckam* Arch-Bishop of *Canterbury* at a Synod held at *Reading* (moved by reason of Complaints made to him by the Chancellor) determined to defend the Privileges of the University and take the Goods of the University into his protection. For which purpose he Ratified the Sentence of Suspension and Excom-

communication made by the Chancellor or his Deputy against the Scholars that were Delinquents, or that Appealed to any Diocesan, Subject to the Archbishopal See.

Hereupon * Anno 1284. 11 E. 1. The Archbishop Visited the University about the end of *October*, and interposed his desires and Authority, having Writ to the University not to be disobedient to their Diocesan and to the Bishop of *Lincoln* to use moderation; tho' I find the most of what he did was, as his Predecessor *Kilwardly* had done, to Condemn certain Erroneous Positions used to be maintained in the Schools by the the Minorite Fryers Preachers, and opposed by the *Augustins*, yet I find (a) *Richard Knapwell* a Dominican, Appealed to the Pope Anno 1285. Against the Arch-Bishops Sentence.

* Wood. Ant. fol. 127. a. The Arch-Bishop of *Canterbury* Visits.

Oxonienſem Academiam jure Metropolitico Viſitaturum adiit. Parker Antiq. fol. 204.

(a) Regiſt. *Peckham.*

Anno 1287. (b) In the life of *John Peckham* Arch-Bishop of *Canterbury*, Arch-Bishop *Parker* Writes, that there was a conteſt betwixt the Bishop of *Lincoln*, *Oliver Sutton*, and the University of *Oxon* for ſome Years concerning the Jurisdiction of the Bishop over the Scholars, in which when the Arch-Bishop underſtood the Cauſe of the Scholars to be feeble and not able to be Defended by the Laws, he Writ to them, that if they continued the Suit they ſhould undoubtedly be overcome, while they no ways could exempt the privileges they uſed from the Episcopall Jurisdiction Eſtabliſhed by Common Law; that is, the univerſally received Canons.

(b) Si in jure contenderent vinci, eos & ſuperari neceſſe eſſe, preſertim cum his quibus uterentur privilegiis a Jurisdictione Episcopali jure communi ſtabilita eximi nequaquam poſſent Antiq. Brit. p. 204.

By which we may Judge, that the Arch-Bishop of *Canterbury* allowed the Ordinary Jurisdiction of the Bishop of *Lincoln*, in whole power *Oxford* then was; yet this hinders not, but that they might be

The University ſubject to ſeveral Viſitations.

subject to other Superior Visitations as the Kings or the Popes Legates.

§. 7.
* A. fol. 95. &
Twynus lib. 3.
sect. 19.
Pope Boniface
the 8th. grants
several privi-
leges and ex-
empts the Uni-
versity from
Archiepiscopal
and Episcopal
Visitation.

Anno 1301. 30 E. 1. Pope Boniface the Eighth the 11th. of the Ides of June 10 Pontificatus * grants to the Chancellor, Masters, Doctors and Scholars of the University of Oxford a Bull, wherein is expressed that they had set forth in their Petition that several Kings of England of Famous Memory had granted them several privileges confirmed after by the present King, and did humbly supplicate him, that he would make to them the like Concession and by his Apostolical Dignity would vouchsafe to exempt them from all Jurisdiction and power of whatsoever Arch-Bishop, Bishops and other Ordinary Judges, which he grants, and Confirms their Exemption made by Pope Innocent the Fourth.

Mr. Wood gives many Reasons why this Bull should rather be ascribed to Pope Boniface the Ninth Anno 1389. almost an Hundred Years after, but I need not enter into that enquiry, since all that I infer from this, or any other account I give of this matter, is, that the Kings of England were the first bestowers of the Secular privileges at the least, and the Popes of the Spiritual and Ecclesiastical, and what the Arch-Bishop of Canterbury as Metropolitan, and the Bishop of Lincoln as Diocesan did was by the Ordinary power of Visiting their Dioceses which the Canons gave them as I shall shew hereafter.

§. 9.
The Dominicans
make
disturbances.

This leads me before I proceed further to give an account of a difference that happened betwixt the University and the Dominicans, wherein it will appear, that matters relating to the Ordering the manner and Method of taking Degrees, and Establishing

lishing and performing Exercises and Lectures were disposed by the King or the Pope.

The Case was this.

There having been a difference * betwixt the Dominicans and the University of *Paris* about the Observance of Statutes of the University, the Dominicans claiming an Exemption from it's Jurisdiction, and denying that the Inceptors in Theology should ask Licence of the Chancellor, or undergoe any Examination, but from those of their own Family, after an Appeal to *Rome* the cause was adjudged in favor of the Fryers, which the University took so ill that they abstained from public Lectures.

* Wood *Antiq. Oxon. fol. 150.*

The Dominicans in *Oxford Anno 1211*. Cavilled at the Statutes of that University, which for brevity sake I shall refer the Reader to peruse in my Author, but generally they were about taking their Degrees in Philosophy and Divinity according to the precripts of the Statutes, and that they should be Admitted to no Degrees unless they Swore to the Observation of the Statutes, and that they should perform some Exercise in the Schools, and Preach in *St. Maries*, whereas they would Execute them in their own Fraternity: Upon which they fixed their Appeal, the Chancellor having refused it, upon the Gates of *St. Maries Church*.

Wood *ut supra.*

Anno 1312. (a) The Dominicans apply themselves to the King who orders, that they shall enjoy their privileges, and that at the next Parliament the University by their Attorney shall Answer to their Allegations, and bring their Charters and Privileges granted by the King or his Predecessors.

(a) *Id. fol. 151. b. Claus. 2. Ed. 2. M. 12.*

By which it appears how the King was their proper Judge, and what is called Parliamentary Judgment was before the Lords as the Kings Supreme Court, where differences among his Subjects were to receive their final determination. * But it seems here it was not ended, for both Parties chose their Advocates, who appeared at *Avignon* or *Rome*, but the Pope to save Expences refers them back to have the matter determined in *England*.

* *Idem. fol.*
152. a.

The next Year *Anno 1313*. I find Arch-Bishop
(a) *Reg. Reynold. fol. 32.* (a) *Gualter Reynolds* Writes to the University in their favor, and the Year following *Anno 1314*. They put the matter to Arbitration, (b) and send the Composition to be Confirmed by the King. Still it is the Royal Authority that is requisite to make any Act binding.

(b) *Compositiones ad Regem, ut ab eo firmarentur, transmissa Pat. 7. E. 2. part. 2. M. 10.*

The Dominicans were an Order then in great esteem, for I find that they were mostly the Kings Confessors, and so *Anno 1316*. They obtained the Kings Letter in their favors to the Pope, and *Anno 1318*. They obtained from the Pope a Privilege of Exemption from the Jurisdiction of the University.

The observation upon the foregoing Records.

By all these it appears, that the ordering of all matters appertaining to the very taking Degrees, &c. were settled by the Kings Assent, and Confirmation of Popes. Inow proceed.

§. 10.
(c) *Wood fol. 160. b.*
(d) *Harpfield Histor. Escl. Sec. 14. c. 28.*
(e) *Reg. Reynold fol. 145.*

(c) *Anno 1325. 19 E. 2. Gulhardus* Cardinal of *St. Lucy in Celice*, then Arch-Deacon of *Oxford* claimed the (d) Cognizance of Ecclesiastical Jurisdiction and (e) *Henry Gower* the Chancellor, the Proctors, &c. resisted. And the Pope directed his Bull to the Arch-Bishop of *Canterbury* to be Published by the Abbots of *Osney* and *Rewley*, to Cite the Chancellor and

and Proctors to appear in 60 Days at *Rome*, and complaint being made to the King * he Writes to the Pope to Nominate persons here to determine and compose the Controversie, which was accordingly done. By which it appears how Appeals were made to the Pope in such cases, yet the Kings of *England* were not willing to have their Subjects grieved with chargable Appeals and Journies to *Rome*.

heard in *England*.

The Bishop of *Lincoln's* Archdeacon of *Oxford*, claimes Ecclesiastical Jurisdiction and the Pope cites the Chancellor. * *Rot. Rom.* 19. Ed. 3. The King writes to the Pope, that the matter may be

Anno 1350. 24 E. 3. John (a) Wyllot being unduely chosen Chancellor the Year before, and removed by the King; Mr. William Palmorna was chosen Chancellor, and John Synwell Bishop of *Lincoln* delaying to Confirm him, the Univerfity apply themselves to the Arch-Bishop of *Canterbury*, Simon *Istip*, who Commanded the Bishop to Confirm him within Seven Days, after the Receipt of his Mandate, or Five Days after to shew cause why he did not; who not Confirming or appearing, upon a second complaint the Arch-Bishop (b) sent Commissioners to whom he gave power to Confirm the Chancellor, and he deputed others (c) Judicially to determine concerning the Election and Confirmation, and of the injury done by the Bishop of *Lincoln*: Who thereupon Appealed to the Pope, and for Contempt being Excommunicated by the Arch-Bishop, he Appealed again, and thus the Suits depended before the Pope till, saith Arch-Bishop Parker, (d) the Bishop renounced his privileges, and yielded to the Arch-Bishop, and thus the matter stood till *Willi. Wittfley* Arch-Bishop of *Canterbury*. *Anno* 1375. 49 E. 3. obtained, from Pope *Urban* the Fifth, that the Univerfity should be exempt from the Bishop of *Lincoln's* Jurisdiction.

§. 11. (a) Wood, &c. fol. 172. b. The King removes a Chancellor, the Bishop of *Lincoln* denies to Confirm the Kings Chancellor. The Univerfity Appeals to the Arch-Bishop. (b) Vide Mat. Parker *Antiq.* Brit. fol. 268. (c) *Regist. Istip.* fol. 20. 23, 35. Contests betwixt the Arch-Bishop of *Canterbury* and Bishop of *Lincoln* about confirming the Chancellor of *Oxford*. (d) Vide Parker. *Antiq.* Brit. fol. 283.

diction, and that the Scholars should have free liberty to Elect their Chancellor, who thereby might enter upon his Magistracy, without any farther Ceremony of Admission.

I have Inserted this to note, that when the Visitatorial power was claimed, the Confirmation of the Chancellor was then required, but the Election was always in the Regents and non-Regents as it is now. In this particular only it varies, that since Sir *John Masons* time Anno 1553. Excepting Cardinal *Pool* and the two late Arch-Bishops, *Land*, and *Shelden*, the Chancellors have been Noble men and commonly the respective Kings have recommended the person by a kind of *Conge d'eslire* of which I shall give one instance hereafter.

Anno 1376. 50 E. 3. Dissentions still continuing betwixt the Chancellor, &c. And the Civil and Common Lawyer, the King (a) Commissionated *William Courtney* Bishop of *London*, *Thomas Arundel* Bishop of *Ely*, *Adam Howton* Bishop of *St. Davids*, *Ralph Ergham* Bishop of *Salisbury*, and *William Read* Bishop of *Cicester* or four or three of them, and gave them power to take cognizance and determin all matters in difference. By Command (b) likewise the Deputies or Proctors from the Doctors and Masters of Arts, and the Canon and Civil Lawyers, offered the State of the case to the Parliament, and from thence to the Bishops, who meeting in *St. Pauls London*, (c) Abrogated the Statutes which occasioned the disagreements, and Decreed other two Statutes in favor of the Civilians, yet thus the Controversie, by the obstinacy of the Parties, ceased not, and tho' other Commissioners were appointed, yet King *Edward* dying, his Grandson King *Richard* the

Second

(a) Pat. 50 E. 3.
part 1. M. 13.

(b) Id. M. 14.
The matter
commanded be-
fore the Parlia-
ment and deter-
mined by the
Kings Com-
missioners.

(c) Wood
Antiq. lib. 1.
fol. 185. b.

Second succeeding, those Acted nothing; and fresh broyles and tumults arising, the Chancellor, Proctors, and three Monks (a) were cited to give an account of them, and in the interim the University was Mulcted by the Suspension of their privileges, but by submitting themselves to the Kings Clemency, they were pardoned, and a Tribute, (b) lately set upon them, was taken off.

(a) Claus. 1.
R. 2. M. 4.
C. 28.
The King Suf-
pends their
privileges.

(b) Pixide
P. P. N. 17.

In these proceedings we find the King Abrogating Statutes and appointing new ones by his Commissioners, and the privileges of the University Suspended: which are sufficient presidents of the Kings power.

What is to be
noted from
hence.

Anno 1379. 3 Ric. 2. The King having granted several Immunities to the University and settled matters betwixt the University and Dominicans, he took into consideration a matter which had been three Years in Debate. The case was this, there having been disturbances in *Queens* College, whether upon the Election of a Provost, or upon occasion of new opinions, it is not certain which; there had been Suites and Appeals to *Alexander Nevil* Arch-Bishop of *Tork* their Local Visitor, and he sent persons deputed by him with power to determin the matters: But these were received so sharply at *Oxford*, that they could not exercise their Visitatorial Authority, till the King sent his Breve or Writ (c) to the Chancellor and Major to assist the Visitors in executing their Office; by which at present things were quieted. But it broke out again, till by a second Visitation, or peculiar Mandate sent to the College, Mr. *Henry Whytefield* the Provost, Mr. *William French*, *Robert Lydeford*, and *John Trevis* Fellows were Expelled.

§. 12.
Disturbances in
Queens College
and the pro-
ceedings of the
Local Visitor,
and the King
thereupon.

(c) Charte-
phyl. Circit.
Oxon.

These

These by private consultation among themselves took away the Charters, Books, the Jewels, Mony and other Goods of the College, till the Chancellor and Proctors upon the Kings (a) Mandate caused them to be restored by *Whitefield*, the Expelled, to *Thomas Carvel* the new Provost. But still all was not quiet, those Expelled especially making disturbances, therefore on the Seventh of February the King issued out his (b) Letters Patents to Mr. *Berton* the Chancellor, *John Sherburn*, *Thomas Swindon* and *Robert Bixy* under the Great Seal to examin and determin the matters.

(a) *Inssu Regio*
13. R. 2.
M. 40.

(b) *Pat. 3 R. 2.*
par. 2. M. 12.

What is to be
inferred from
this.

By this it appears, that either by the Local Visitor or the Kings absolute Authority, the Provost and several Fellows were Expelled. That the King Commissionated some under the Broad Seal to hear and determin the matters which no doubt was by some one way and demonstrates the Kings absolute power in Expelling and by Commission determining matters in the University, without other Visitations, and we may note when ever the Visitations were performed by the Ordinary Visitors, viz. The Arch-Bishop or Bishops, it was about some things relating to their Function, settled by the Canons and allowed by the Laws of the Land; but still the last resort was made to the King, besides his first giving leave as in many particulars is very clear.

§. 13.
Arch-Bishop
Courtneys
Visitation.

(c) *Walsingham*
Hist. Anglie ad
Annu. 1389.
fol. 341.

(d) These were
the Black
Monks of Glou-
cester College.

Anno 1389. *William Courtney* Arch-Bishop of *Canterbury* Visited his Province, and the Scholars were troubled (c) for that they had never seen nor heard such a Mandate of Visitation, that both Exempted and not Exempted should be Visited. Therefore the Black Monks urged their (d) Exemptions, and applied themselves to the Abbots of *Westminster* and

and St. *Albans*, who advised them not to yield to the Arch-Bishops Visitation, and Letters were sent from the Abbot of St. *Albans*, to the Arch-Bishop to desire him to desist, to which the Arch-Bishop replied, that saving the Right of his Church, he would willingly do what he could for his special friend the Abbot, but said, he could not any ways desist, saving that Right from Visiting the Prior and Black Monks Studying in Oxford, even tho' the (a) King should intreat for them, because they were a College, and had a Prior and Chapter, and lived in Common. The Monk sent from St. *Albans* said they were not a College, (b) for that they had not a Common Seal, or were Endowed with Spiritualities or Temporalities, and wanted many other things which were required to Constitute a College. The Arch-Bishop Answered, therefore he would Visit, to enquire how it was with them. Then the Monk reply'd, if he came to Visit them he had no Jurisdiction to enquire of such things, (c) but only to Visit such as were not Exempt, for those that were Exempt were Visitable in their proper Monasteries by the Arch-Bishop and so not to be Visited a second time. To this Allegation the Arch-Bishop Answered, that they were not Visited by him in their proper Monasteries, for the Abbots excused them, for that they were in the Schools, therefore he would Visit them there. And then a Monk and Lawyer, who came with the Arch-Bishop, willing to enlarge the Arch-Bishops Jurisdiction, said, that the Arch-Bishop might Visit even the Exempts (d) as long as they were in the Schools, for that they were under the Jurisdiction of the Chancellor: to this the Monk of St. *Albans* replied,

Wood Antiq.
Oxon lib. 1.
fol. 196. a.

(a) Etiam si Rex
Anglia pro
predictis
instaret.

(b) Non fuit
ibi Collegium
cum ibi moran-
ter sigillum
Commune non
habent nec locum
sibi donatus
Temporalibus
& Spiritualibus,
&c.

(c) By this
appears what
was of the Ef-
fence of a Col-
lege, and that
in this Age
Monks of se-
veral Orders
had their
Schools here,
and yet were
reckoned as
Members of the
Convent they
were sent from,
rather than of
any Incorporate
Society of the
University.

(d) Exempti
ibi ita sunt
privilegiati,
quod ubicunque
fuerint non sunt
sub Jurisdictione
aliquius
Episcopi, nisi
Romani Ponti-
ficis, vel Lega-
ti a Latere
missi.

A a

that

that the Exempt are so privileged, that wherever they were they might not be under the Jurisdiction of any Bishop unless of the Bishop of Rome, or his Legate a Latere sent hither. To which the Arch-Bishop said, if it were so, he neither could nor would molest them in any thing.

A while after *Simon de Southerey* presented himself to the Arch-Bishop in the Church of St. *Fridiswyde*, with all the Monks Exempt and not Exempt, and the Arch-Bishop asked them if they submitted to his Visitation, and it was answered, that they came to obtain (a) his favor, and the Arch-Bishop told them, that he excused them, and never intended to burthen them, so there was an end of this matter.

(a) *Ad Cap-
tandam ejus
Benevolentiam
advenerunt.*

By all which it appears, that the Dispute was about the privilege of Exemption: But that the power of Metropolitcal Visitation was allowed, and that power was by the then Laws, and is now, derivative from the King.

S E C T. III.

Who Visited the University of Oxford after the 13th. of King Richard the Seconds time to the beginning of King Henry the 8th. Reign.

§. 1.

HOW far the King Interested himself in Ordering the Affairs of the University appears in what King Richard the Second did Anno 1390. 14 Regni of which I shall give a short account.

The

The Fryers Preachers, or Dominicans were complained of by both the Universities, that several of them, Students there, declined the Examination of the University, in order to the taking their Degrees, and going beyond Sea obtained the Titles of Masters, not without Infamy to the Brothers or Fryers, and the great loss of the University. Thereupon the King writes to the Prior Provincial, and all the Priors in *England*.

The King redresseth certain grievances complained of by both Universities.

That since the order (a) was Instituted to resist and destroy Heresies and Errors against the Divine Law, and the Catholic Faith, dayly springing up, &c. To effect which, mature knowledge, honesty of life, and the Doctrin of Divinity was necessarily required, of which qualifications, in former time, the Fryers of that Order used to be examined, and approved as well among themselves as in both the Universities. But now he understood that some of the said Fraternity, little instructed or approved in the Divine Law, but Apostates, notably vitious, &c. have gone beyond Sea, and there cunningly and fraudulently, begged & obtained to themselves the Degrees of Masters, and other Exempting Graces: That when they return, they might be reputed, and cherished among their Fraternity with the Honor of that faculty, to the damage and hurt of the Catholic Faith, to the prejudice and scandal of the King and his Realm, and mostly to the disgrace of the said Order. Therefore the King not willing in any manner to Tollerate the premisses, so prejudicial and damageable to the English Church, the King and his people, and in process of time redounding, in all likelihood, to the subversion of the Order;

(a) Ordo praedictus Institutus sit & firmatus, ad resistendum & destruendum Hereses & Errores contra legem divinam, & fidem Catholicam inde emergentes, &c. Claus. 14. Rich. M. 32.

(a) *Vobis omni-
bus & singulis
subscriptis
omnium que
nobis fore
facere poterit
injungimus &
mandamus,
Idem. Ibid.*

enjoyns (a) and Commands all and every the Provincial and Priors under the forfeiture of all things which they could forfeit, streightly nevertheless as much as he could prohibiting them, that they in no manner admit such to the Liberty, Honors, and favors which the Doctors in Divinity regularly made, according to the Examination aforesaid, ought to have: nor that they Treat any such with the Honors, Favors or Liberties, &c. but that they have no consideration to such Impetrations, Provisions, or Exemptions.

§. 2.
What is to be
observed from
hence.

What is worthy noting from hence is, that altho this Order had many privileges and Exemptions from Visitations and subjection: Yet we find the King, under the penalty of the forfeiture of all they could, enjoyns them to obey what he commands, and tho it is not to be doubted that some of these Men might receive Degrees in some Universities, who had from the Pope privileges, that whoever received Degrees there, should enjoy all the Liberties, Honors, &c. which those did of our own Universities: yet the King disallows all: so that by this one Instance it appears, that the Kings of England allowed or disallowed at their pleasure Immunities, Exemptions, privileges, &c. which were granted by the Popes Emperors or Foreign Kings: for from such those privileges to Graduates only could be granted.

From which it is manifest that the King challenged a power of being Supreme Judge of what Exemptions should be allowed in his Universities, and by consequence was always to be reputed the Supreme Visitor.

Hereby also will appear the true Reason of the Application to the King, in the contests I shall presently

sently give an account of; which happened betwixt the Arch-Bishop of *Canterbury*, and the University about his Visitation, which by the Popes Bulls they were Exempted from.

§ Anno 1395. 19 Ric. 2. The *Lollards*, that is, the favorers of *Wickliff's* Doctrine, greatly increased, sowing (as the Writers of that time and others Style it) Tares (a) among the Wheat, phoaking the Catholic Doctrine. Upon which many complaints are made to the King, and especially by the Bishops, by which being moved, he Writ to the Chancellor (b) Commanding him, as the words are, utterly to Root out those wickedest (c) overturners of the Faith, and at the same time Writ to the Chancellor and Doctors by his Mandate, enjoining them to examine the Book of *Wickliff* called the *Trialogue*, and to send the heads of the Errors therein contained under the Seal of the University into the Chancery, and it is noted farther, that the University submitted it self to the King, promising to stand to his Arbitrament, for which purpose they sent an Instrument by their Chancellor *Thomas Hundymann*, *Thomas Merk*, *Thomas Crampton*, &c. to the King.

§. 3.

(a) *Zizanium inter Triticum proferminantes.*

(b) *Cl. 19 R. 2.*

M. 24.
(c) *Ut nequis- simos, fides Everjures.*

The Kings Mandate to extirpate what then was reputed Heretic.

Inferences from hence.

By which it appears manifestly, that the King by his absolute power Commanded matters to be ordered in the University, and that it submitted to his determination notwithstanding other Metropolitcal Visitation, which as such must be looked upon as done by the power of the Kings Ecclesiastical Laws as the most learned of the Long Robe do maintain. In the Year 1536, The 20th of *Richard* the Second a great contest was betwixt the Doctors of Divinity, Masters of Arts, and the Civil and Canon Lawyers:

(a) Wood
Antiq. Oxon
lib. 1. fol. 197.
New contests
betwixt Gradu-
ates and Law-
yers.

(b) *Pat. 20 R.*
2. part. 3.
M. 26.

The reason
why the Au-
thor enlargeth
upon the Visi-
tations by Arch-
Bishop *Arundel*.

Lawyers: The whole process of which may be seen in my (a) Author, the sum of which was, that several Statutes were made to their prejudice, and that the Chancellor pretended Bulls of Exemption from the Archiepiscopal Visitation of the University, The conclusion of all which was, that as King *Edward the Third* had *Anno 1376. 50 Regni* appointed Five Bishops to enquire into the matter and order it; so the (b) King the next *April* by his Royal Authority confirms their doom.

By which it still appears how the last resort was made to the King which will yet more fully be cleared by what I shall now relate as to the Visitation of Arch-Bishop *Arundel* under King *Richard* the Second and King *Henry* the Fourth; which because they have been so much insisted upon, as pregnant proofs, even in King *Charles* the Firsts time, that the Arch-Bishop of *Canterbury* by Right is the Visitor of the Universities, I think it necessary to take notice of, that I may shew the grounds upon which those Kings allowed the Arch Bishops Visitation, and how it no ways prejudices the Kings Visitatorial power.

S. 4. The Arch-Bishop *Arundel* Visiting by the Kings leave commands the University to obey.

(c) *Literis præcepit ut in juris Regii detrimentum, Hæreticorum vero & Lollardorum patrocinium, Archiepiscopali sese, aut Episcopali Authoritati nequaquam subtraherent.*

Anno 1397. 21 Ric. 2. The Arch-Bishop of *Canterbury* determining to Visit for the suppressing of Heresies, as then they were called, and composing affairs of the University, and understanding that the Chancellor and Proctors supported by the Popes Bull of Exemption, intended to obstruct it. He signifies this to the King. Here I hope is a craving the Kings leave and aid; what doth the King in this case? He presently Writes to the Chancellor and Scholars, and forbids (c) them, that to the damage of his Kingly Right, or Patronage of Heretics and Lollards, they no ways withdraw themselves from Archiepiscopal

copal or Episcopal Jurisdiction, or produce any Bull of the Pope to that purpose. But that they renounce the said Bull before the Kings Messenger, and testifie such their Renunciation by public Instruments.

*Id. par. 21 R. 2.
part. 3. M. 32.*

I know not wherein the King could discover his power more plainly than in Abrogating the very Bulls of Popes: surely he that can do this may Suspend a Statute.

I know it will be here replied, that the King upon the Controversies betwixt the Arch-Bishop, and the University about the Right of Visitation, declared for the Arch-Bishop.

To which at present I shall only reply, that the King here was not as a party, but as a Judge in a Controversie depending, declaring his own pleasure, which surely manifests his Supreme Jurisdiction, and that appears from the very words of the Parliament, (a) that whereas some dissensions, strifes, and debates of late were moved and risen betwixt the Arch-Bishop, &c. on the one part, and the Chancellor of the University of Oxford, and several others of the said University on the other part, about the use and exercise of Jurisdiction and Visitation, the Arch-Bishop claiming it, &c. as appertaining to his Church of Cant. rbury, &c. The King willing to quiet and pacifie the said Dissensions, Suites, and Debates, and to preserve peace, quiet, and tranquility amongst the parties, as it agrees with his Kingly Majesty, attending the damage and danger which in probability might happen thereupon, considering that *Jure Communi* the Visitation belonged to the Arch-Bishop, &c. therefore determines it for him.

(a) *Cum quædam dissensiones, lites & debata nuper mota fuerunt inter, &c. super usu, & exercitio Jurisdictionis & Visitationis diſſe Universitatis &c. nos volentes hujusmodi dissensiones, &c. (prout Regia convenit Majestati, attentis damnis & periculis qua inde verſimiliter evenire possent) ſedare & pacificare, ac pacem quietem & tranquillitatem inter partes prædictas pro viribus conſovere, &c.*
*Pat. 20 R. 2.
part. 3. M. 9.*

Surely *Jus Commune* must here be taken as that by Canon Law, Common Right, or by our Common Law.

Law of England this appertained to the Arch-Bishop of *Canterbury*; and then it can be understood no other ways then that *virtute officii* he might Visit, correct and reform all within his Dioceſs, and that Exemptions were breaches of that Common Right, and whatever he did *quatenus* Arch-Bishop, or as *Legatus natus* he did by Authority from the King or the Pope, and from either of which ſoever he had them, or by the Canons; yet none of theſe can deprive a more Sovereign power, from viſiting by it's ſelf, or it's delegates; and the laſt claufe (a) of the Patent is therefore to be obſerved heedfully, which is, ſaving to our ſelves and our Heirs all other [Rights or Prerogatives] which we and our Progenitors in by paſt times, have been wont to uſe in the ſaid Univerſities.

(a) *Salvis nobis & Hæredibus noſtris, omnibus aliis quibus in Univerſitate prædicta nos & progenitores noſtri uti conſuevimus temporibus retroactis*
Id. Pat.

This further appears, if we credit Mr. Woods note upon it, that this did not touch the Popes Exemption; for if not that, it much leſs effected the Kings Prerogative in general, for tho' one King by his Charter may yield it, yet he cannot in prejudice to his Succeſſor make it binding to him, to which we may add what he further ſaith, that, whatever was done, it is certain that that Viſitation did not then ſucceed.

Before I leave this head I muſt deſire the Reader to conſider, that the Arguments of thoſe who oppoſed the Exemption were, that this Immunity granted by the Pope was not only to the prejudice and grievance of the Metropolitan and Ordinary, but likewise to the whole Univerſity, and was rather a ſervitude then liberty to them, for without that, if they had been oppreſſed by their Chancellor, or Vice-Chancellor, they might have been redreſſed by Appeals

peals to the Arch-Bishop, but now, being reduced under the power of one, they were subject to perpetual servitude.

§ Anno 1411. Thomas Arundel the Arch-Bishop intending to Visit the University sent his Letters of Citation (a) to the Chancellor, Doctors, Masters and Scholars to be ready against his coming, and was received by the Chancellor and Proctors and a great conflux of the University, and the Chancellor Richard (b) Courtney told him, that if he came as a Guest he was most Welcome, but if he came as a Visitor the University was long since by the Popes Bull freed from Archiepiscopal and Episcopal Visitation: at which the Arch-Bishop was much displeased, and after a Day or two stay he went away, and sent the King an account by Letter, so the King Commanded (c) the Heads of the University to appear the Day after our Ladies Day to give an account of the Popes Bull which they pretended. What followed upon it appears by the Chancellor and Proctors laying down their Offices at Lambeth, whether voluntarily or compelled appears not. And the King writes to the University, that the *Cancellarius* *Natus* or Senior of the Theologues should exercise the Office till there should be an Election of another in his place, and Commanded that the Papal Exemption should be brought to him. Upon this there was such a sadness surprized the Students that the Lectures ceased, and they were dispersed, and an end seemed to be put to the University according to a Statute made to that purpose, that they should use that Remedy if any invaded their Liberties and Privileges. Which being imparted to the King he Writ first (d) displeasedly at the Fact of the Heads, and in a

§. 3.

(a) *Hanc in memorabilibus* fol. 106. b.

The Arch-Bishops Visitation refuted.
(b) *Dum nuntius visitare Universitatem Oxoniaram Repulsam passus est. Walsing. Epitome neust. ad Ann. 1411.*
The Kings Authority.

(c) *Fragmenta veteris Registris Universitatis Oxon Bib. Cotton sub fastina c. 7.*

The Chancellors and Proctors quit their places.
The King appoints the Senior Theologue to Officiate in the Chancellors stead.

The Students leave the University and desist from Lectures.

(d) *C. fol. 31. a.*

(a) *C. fol. 55.b.* second Letter (a) exhorts them in softer Language to revoke their Lectures, and after a while, lest the University should receive damage, about *October* the King Commanded that such should be chosen as might Execute the Offices of those removed for the remainder of the (b) Year, and the University chose the last Chancellor and Proctors, which being certified to the King he took it very ill. After which, Law Suites being Commenced betwixt the Arch-Bishop and University, it was agreed, that all parties should stand to the Kings Judgment, and about the middle of *December* the King heard it, and he appointed, that the Sentence (c) which King *Richard* the Second had given should stand.

The King gives leave to choose Chancellors, &c.

(b) *Frag. vet. Regist. supra.*

The King displeased with the Election.

The King hears the cause and determines for the Arch-Bishop.

(c) *Ibid.*

§. 6.

(a) *Rot. Parl. 13 H. 4. N. 15.*

An account of the whole matter as in the Parliament Roll.

I shall now give an account of the matter as it appears in the Parliament (d) Roll.

First, there is the Arch-Bishops Petition to the King, that with the Assent of the Lords Spiritual and Temporal and the Commons Assembled in the said Parliament, the Schedule Annexed might be confirmed.

Which Schedule contains the Declaration of King *Richard* the Second, as it is to be found in Mr. *Pryn*, wherein it appears, that the ground of the Contest and differences was about a Bull of Exemption pretending to exclude the Arch-Bishop of *Canterbury* and his Successors, and all other Ordinaries and Founders of the said University and Colleges from Visiting, and all other Ordinary Jurisdiction, which Bull by a *venire facias* was brought into the Chancery at *Westminster*, and the Chancellor and Proctors shewed a sufficient Warrant under the Universities Seal to produce the Bull in Chancery, and to answer there, and to do and receive what should be ordered and determined

terminated by the late King *Richard* the Second and his Council as appears by the Records of the Chancery, and after the Chancellor and Proctors for themselves and the University submitted themselves in the foresaid matters (a) to the Ordinance and Determination of the said King.

(a) *Ordinationi
& definitioni
dicti unper
Regis.*

¶ The King after mature and fuller deliberation with his Council, clearly considering that the Bull was procured in prejudice of his Crown, and to the revoking or enervating of the Laws and Customs of his Realm, and in favor and emboldning of Heretics and Lollards, Murtherers and other Malefactors, Ordained, and by his Breve or (b) Mandate Comanded and forbid the Chancellor, Masters, Doctors and Scholars of the said University on their Faith, Allegiance and the love that they ought him, and under the penalty of losing the privileges of the said University, & the forfeiture of all other things which they could forfeit, that they presumed not to execute or exercise the said Bull in any part of it, or any ways to presume to enjoy or receive any benefit of Exemption by the said Bull: But to renounce all the Exemptions and Privileges contained in it before *Richard Kendall* the Kings Clerk and Notary, and should transmit an Instrument for that purpose under the Seal of the said University by the said Clerk under the Penalties aforesaid. After which follows the Kings Sentence as before.

(b) *In fide Lo-
geancia &
dilectione qui-
bus sibi tene-
bantur. Ac sub
pena amissionis
privilegiorum
Universitatis
prædictæ &
sub forfeiture
omnium alior-
um que sibi
foris facere
potuerunt, ne
dictam Bullam
in aliqua sui
parte exequi
seu exercere
seu Beneficium
quoddam Ex-
emptionis per
Bullam illam
aliqua-
liter re-
portare seu
recipere presu-
mere.*

In this part it may be observed how the King discovers his Authority and Prerogative over the University, in injoyning them to renounce the Popes Bull and not to Execute, &c. it under the penalty there mentioned, which demonstrates that for contempt and disobedience the King may not only Sus-

The King may deprive the University of all privileges for disobedience.

pend and Deprive any Member of the University, but take away all their Privileges, &c. which would be well considered by those who obstinately refused to obey the Mandate of a King of *England*.

§. 7.
The account of
the latter Visi-
tation 12 H. 4.

Then follows the account of the later Visitation of the Arch-Bishop in the 12th. of *Henry* the Fourth as before related, where *Richard Courtney* the Chancellor, and *Benedict Brent* and *John Birch* the Proctors opposed him, and he and the University submitted themselves to the Arbitrament, Judgment, Ordination and Decree of the King, and the King Summoned them to appear before him at *Lambeth* upon the 17th. of *September*, where hearing all things and having consideration of the Submission made to King *Richard*, and the Ordination, Judgment and Determination of the same, the King Confirmed and Ratified the same: And further ordered if they obeyed not the Arch-Bishop, &c. all their Franchises, Liberties, and all the Privileges of the same University should be seized into the hands of the King and his Heirs till they performed it, and the Chancellor and Vice-Chancellor and Proctors of the University for the time being and their Successors and the University shall pay to the King and his Heirs 1000 l.

Note here the
Kings peculiar
power in pas-
sing an Act of
Parliament.

Then follows that this Schedule being seen and examined and understood with mature and diligent deliberation: The King in full Parliament affirmed and declared, that all and every thing contained in the same Schedule were done, Arbitrated, Ordered, Considered, Decreed and Adjudged by him. And the Lords Spiritual and Temporal, and the Commons in the said Parliament who had full deliberation likewise of the same, approved, ratified and confirmed it.

Upon

Upon the whole matter of this great contest about the Arch-Bishops Visitation, I think the King and the Parliament were at that time the more Inclined to confirm the Arch-Bishops power, because that kept the Visitatorial power within the Kings Dominions, and Excluded Exemptions, which the State of England was rarely inclined to favor, as being mostly as prejudicial to the Crown as the Bishops. And Wickliff's Doctrin spreading, the King was more willing the Arch-Bishop should Visit the University, because it was his proper Office to see to the preservation of the Establish'd Religion, and if the University had been left to the Visitation of the Chancellor, the opinion of Mr. Wickliff might have the more encreased, since the temper of the Members might have been changed from the Doctrin professed, since so many in the University were then said to have embraced it.

I have insisted the longer upon this particular for two Reasons, first to shew that the Government, ordering, and reforming of Universities were then Judged to be of Ecclesiastical Cognizance; especially in those matters which appertain to the Doctrins taught in them, which even in their Philosophical Disputes in some measure effected Religion, even the taking of Degrees; except in the faculty of Physic, was in *Ordine ad Spiritualia*; as appears in those Constitutions which prohibit any from having Benefices but such as had taken Degrees in Universities; a further Illustration of the former of these Inferences I shall clear when I speak of Bishop Rippingtons Visitation.

Secondly, To shew the mis-application of Mr. Pryn, who finding by the Transactions of King

§. 8.
The reasons why the Author hath given so large an account of this.

The misapplication of Mr. Pryn.

Richard

Richard the Second, and King *Henry* the Fourth, and those of King *Charles* the First concerning Arch-Bishop *Lauds* Visitation, that those Kings determined the matter in favor of the Arch-Bishops, thereby would Infer, that the Visitation of the University of *Oxford* appertained to the Black Parliament, and neither to the King, even when there was no Arch-Bishop in being, nor to any other but the Committee and Delegates of that Parliament: whereas he ought to have considered, that the true reason why the first two Kings determined for the Arch-Bishops Visitation was, because the Universities were at that time favorable to the Doctrin of *Wickliff*, which it was the Interest of the Church to oppose; and might very well induce the Kings to Commit the care of suppressing it, rather to the Arch-Bishop than the Chancellor, and if we consider that the suppressing the Non-Conformists was the care of King *Charles* the First, & that Arch-Bishop *Laud* was so bent to effect it, we are not to wonder that His Majesty determined in favor of the Arch-Bishop, as Arch-Bishop, rather then as Chancellor; especially when it was known that the Earl of *Holland* then Chancellor of *Cambridge* was a favorer and Patron of Non-Conformists.

And Mr. *Pryn* ought further to have noted, that in the two Roman Catholic Kings times the Original of the Controversie was, whether by the Exemptions of the Pope, the University should be Visited by the Chancellor only, or by the Arch-Bishop as Metropolitan, who by the Canons had the Visitation of his whole Province, as also the Diocesan had in matters at least of Religion, as in Bishop *Rippingsdons* Visitation I shall shew: so that the *Cardo Controversie* was upon the validity of the Popes Exemption, and
in

in all the Cases there is a *Salvo* of the Kings Right; and such application was made to him as shews, that the last resort was to the Sovereign even to Judge of the Popes Bulls as before I have hinted.

I shall now proceed in the Series of my History.

§. 9.

(a) Rot. Parl. Westm. Crastino. Anima. 13 H. 5. N. 15.

The King gives Sentence for the Arch-Bishop of York against the Arch-Bishop of Canterbury about Queens College.

About Anno 1412. 14 H. 4. Great contests (a) arose betwixt the Arch-Bishops of *Canterbury* and *Tork* about Visiting *Queens* College, the Arch-Bishop of *Canterbury* affirming it to be his Right as Metropolitan, and by the Grant of King *Richard* the Second. And the Arch-Bishop of *Tork* claimed it as his peculiar Right, as Local Visitor. The Decision of this was referred to the King, who having heard the Arguments on both sides gave Sentence for *Tork*. By which instance it is apparent, that this King determined the point against the Judgment of his Predecessors, and abridged the Metropolitan.

Anno 1414. 2 H. 5. According to the example of the Arch-Bishop of *Canterbury*, *Philip Rippingdon* Bishop of *Lincoln*, the King giving him leave, Published his *Programma* of Citation much after the Arch-Bishop's Form, Dated Feb. 12. To which the University Answered, that they intended to make personal appearance to his Summons at the time and place appointed, to receive only those things which are known to appertain to the Office of Inquisition of Hæretical pravity; but notwithstanding, under that Protestation, that by that personal appearance they intended not to consent to the Visitation of what Articles soever: this is Dated the 4th. of March following.

The King gives leave to the Bishop of *Lincoln* to Visit.

Who is admitted to enquire by Visitation about Heresie, but not in other matters.

By this it seems clear, that the University was Subject to divers Visitors for several purposes, and tho' the Metropolitan Visitation was owned, yet their

§. 10.

How both the Visitations by the Metropolitan and Dioc-

Dio-

San were excor-
cised by Ecclesi-
astical Canons.

(a) Parkers
Antiq. Eccl.
Brit. p. 309.

celan was submitted to in point of Hæresie, which fur-
ther appears in that I find this very Year 1413. Arch-
Bishop *Arundel* (*) made certain Statutes for the
Government of the Universities of *Oxford* and *Cam-*
bridge.

That this power of Visiting by the Bishops was a
settlement by Ecclesiastical Canons is very manifest,
so that the general occasion of Contests about it was
by reason of some privileges granted by Popes, or re-
strictions laid upon the Universities by their Sover-
eigns, or some Exorbitances in the Visitors, in Rescin-
ding useful Statutes, or altering old ones or Customs.

(b) Nec in his
ubi de Visitati-
one ac morum
Correptione
agitur exemptio
aut ulla Inhibi-
tio, Appellatio,
seu Quærela,
etiam ad sedem
Apostolicam
Interposita,
Executionem
eorum qua
decreta aut
Judicata fuer-
int quoquo modo
Impediunt aut
suspendunt.
Binnius Tb. 9.
fol. 709. c. 2. A.

Therefore in the first Council of *Aquileia* I (b) find
it thus Decreed: Let Bishops have the Right and
Power, even as Delegates of the Apostolic See, of
Ordering, Moderating, and Executing, according to
the Sanction of the Canons, those things which in
their prudence to them shall seem necessary for the
amendment of their Subjects, and the profit of their
Diocess. Neither let Exemptions or any Inhibition
Appeal or Complaint even to the Apostolic See, in
any manner hinder or Suspend the Execution of those
things Commanded, Decreed, or Adjudged in those
things which appertain to their Visitation and the
correction of manners.

(c) Idem fol.
424. c. 2. B.

The Council of *Trent* likewise (c) Decreed, that
all those, to whom the Visitation and Reformation of
Universities, and General Studies did appertain, should
diligently take care, that the Universities should re-
ceive their Canons, and if any thing in the Universi-
ties was worthy of Correction and Reformation they
should be amended, and appointed by those to whom
it appertained for the increase of Religion and Eccle-
siastical Discipline.

These

These things I only note to clear the point, that in former Ages the Inspection into the Government of the Universities was Judged to be of Ecclesiastical Cognizance, and by consequence fall under the Kings Visitatorial power by his Commissioners.

CHAP. V.

Concerning the Visitations of the University of Oxford since the Renouncing the Popes Supremacy in England.

SECT. I.

Concerning the Visitations in the Reigns of King Henry the 8th. and King Edward the 6th.

After the Bull of Pope *Sixtus* the 4th. was granted to the University Anno 1479. the 19th. of *Edward* the 4th. whereby it was Exempted from Archiepiscopal or Diocesane Visitations; all power of Regulation of it seemed to be Lodged in the Chancellor and Senate, and other Visitations to lie asleep till King *Henry* the 8th. had cast off the Popes Supremacy: some while before which, as I have before related, their Statutes were delivered to Cardinal *Wolsey* to be corrected and altered, and afterwards all their Charters and Bulls surrendered to the King; so that I find nothing material in this matter

§. 1.

Cap. 3. Sect. 2.
§. 8.

C c

during

during his Reign, besides what I have there related, but in these two particulars following.

(a) Lib. conc.
Civ. Oxon.
fol. 59.

Commissioners
Survey all the
Temporal and
Spiritual Lands
belonging to
the University.

(b) Coll. Charter
&c. Acad. Oxon.
Bib. Cotton sub
faustina c. 7.

The Kings
Visitation of the
University.

Wood ad
Antiqu.

The usual
Method of
proceeding in
Visitations of
the Universities.

Anno 1535. 26 H. 8. 30. Jan. The King appointed Dr. William Tresham (a) Vice-Chancellor, William Freer Major of Oxford, William Barentyne, Simon Hare-court, Walter Stonor, John Clerk, Thomas Elyot and John Brome Knights to Survey all the Temporal and Spiritual Lands and Tythes and enter them into a Book like Doomf-day Book.

And in the same Year Richard Layton (b) alias Leighton Bachellor of Divinity, John London Doctor of Laws Warden of New-College, Dr. Lee and others were sent from the King to Visit the University, their Liberties and Privileges being then in the Kings hands: These Visitors Erected new Lectures, Chastened ill Manners, and by the account they gave to Cromwel it appears they ridiculed all the School-mens Learning, especially that of *Duns Scotus*. They did little in Merton College, because Dr. Richard Gwent the Commissioner for Thomas Cranmer Arch-Bishop of Canterbury, had Visited it the Year before and endeavored to abolish the Ancient commendable Customs of the College, as the Author saith, and it was thought by some, that they came with the same Intention to the University as they did to Monasteries which they also Visited.

Before I proceed further, I think it fit to give an account of the ordinary Method of proceeding in Visitations in these following particulars.

First, Some of the Commissioners were usually persons of great Dignity and Employment, to create esteem and Authority to the Action; others of meaner Quality, who were at more leisure to attend the work; but always some of them were Members of the University.

Second-

Secondly, Their proceedings Ordinarily were after the manner of the Bishops or Arch-Deacons Visitations, proposing and delivering Articles upon which to examin, whereof some are yet extant.

Thirdly, That there was, pravius to such Visitation, a Command from the King not to choose any into places of profit (and sometimes not to Lett Leases) without leave of the King or Arch-Bishops.

Fourthly, That public notice was given to the Vice-Chancellor, and by him to the University in Convocation.

Fifthly, They were Commanded to bring in their Statutes, Charters, Repositories, and all their public Muniments to be examined.

Sixthly, They commonly first Cited all the University to appear before them in the Convocation-house to publish their Commission, &c.

Seventhly, In Visiting they examined every Man (or at least such as they thought good) particularly and privately upon their Articles, and set down their Answer in Writing.

Eighthly, They punished with Ecclesiastical censures as well as Secular.

Having found nothing further concerning the Visitation of *Oxford* in King *Henry* the 8ths. Reign I pass on to that of King *Edward* the 6th. wherein the Reader will find a more particular and full discovery of the Visitatorial power, and having obtained, by the favor of Sir *Thomas Pomis* the Kings Atturney General, a Copy of the Commission granted by that King, I shall here insert it at length in the Latin.

§. 2.

King Edward the Sixths Commission.

The Commission of King Edward the 6th. for Visiting Oxford.

The Names of the Visitors, John Dudley Earl of Warwick, Henry Holbeck Bishop of Lincoln and Nicholas Heath Bishop of Rochester, &c.

The Kings Supremacy and Authority to Visit.

The grounds of the Visitation.

R Ex prædilecto Confiliario nostro *Johanni Comiti Warwici*, Vicecomiti *Lysse*, Magno Camerario *Anglia* & Consanguineo nostro Charissimo, Reverendo in Christo Patri *Henrico Lincoln. & Nicho. Rosfen.* Epif. Dilecto. Confiliario nostro *Will. Pages*, Hospitii nostri Antigrapho, seu Contrarotulatori, *Gulielmo Petre* Mil. ac Secretario nostro, *Ric. Cox* Eleemosinario nostro ac nostræ Juventutis Institutori, *Simoni Haynes*, Exoniensi Decano, *Christophero Newenson* Legum Doctori, & *Ric. Moryson* Arm. salutem. Cum Præclarum & insigne Monumentum serenissimi nostri Regni posteris edere studeremus, & deliberemus; cum Avunculo nostro Charissimo *Edwardo Duce Somerset*, personæ nostræ Governatore, ac omnium Terrarum Dominiorum & subditorum nostrorum Protectore, & cæteris Conciliariis nostris super hac re & super Exornatione Ecclesiæ nostræ Anglicanæ & Hiberniæ cujus Supremum caput sub Christo in Terris nos sumus. Agnoscimus ut Nobiles & præclaræ scientiæ Virtutesque ac boni Mores in illa crescerent per Regiam Culturam & augerentur, nulla ratio prius in mentem venit quam ut primos & præcipuos Fontes Eruditionis & virtutis, vitis, (si quæ in illis essent,) purgatos, favore nostro & Regia Munificentia prosequentes, aliqua commoda ratione auctos amplificatosque redderemus. Quod cum fecissemus in aliis Conventibus & Parochiis, ac privatis in Ecclesiis Regni nostri Angliæ, licet postremo sumus aggressi, tamen prima fuit cura, in Academias nostras Oculos & Mentem adjicere, e quibus omnis ratio Disciplinæ, ac semina bonarum Litterarum ac virtutis, in reliquas partes

partes Provinciarum nostrarum & Regnorum nostrorum solet propagari, ut Illæ in integrum perfectumque Eruditioni ac Virtuti maxime convenientem Statum reponerentur. Et ut hæ Leges, Mores, Consuetudines atque ordines in *Oxon.* & *Cantabr.* Academiis per nos constituerentur, quæ possent maxime facere in honorem Christi & Gloriam Regni nostri, ut virtutum ac bonarum Litterarum uberrimum proventum, unde non Anglia solum & Hibernia, verum exteræ quoque Nationes Lucem possent accipere. In qua deliberatione cum circumspiceremus quosdam viros idoneos & literariæ rei non ignaros ad Istud quod maxime cupimus nomine ac vice nostris præficiendos delegare possemus. De Avisamento & Concilio prædicto, Assignavimus vos septem, sex, Quinque, Quatuor, Tres, Duos, & Unum vestrum Delegatum seu Delegatos nostros, Commissarium five Commissarios ad ea quæ infra scribuntur exequenda, ad Visitandum igitur in Capite & Membris tam. Liberam Capellam nostram infra Castrum nostrum de *Windsor* & Collegium de *Wynton.* ex fundatione *Will. de Wickham* quam Universam Diocesim nostram *Oxon.* præcipue vero Universitatem nostram *Oxon.* ac omnia & singula Collegia, Aulas, Hospitia & Loca alia quæcunque, exercitio Scholastico Deputata tam Exempta, quam non Exempta ibidem constituta, eorumque Præpositos, Magistros, Gardianos, Rectores five Custodes ac Socios, Scholares Studentes, Ministros & personas alias quascunque in eisdem commorantes, deque Statu Locorum hujusmodi, nec non Studio, vitâ, Moribus & Conversatione, ac etiam qualitatibus personarum in eisdem degentium, seu Ministrantium, modis omnibus quibus id Melius & efficacius poteritis inquirendum, &

§. 3.

The places to be Visited.

The free Chapel of *Windsor.*
The College of *Winchester.*The University of *Oxon.*

The persons to be Visited.

What Qualifications to be enquired after.

§. 4.

The punishments to be inflicted, viz. deprivation of Offices, sequestration of profits.

By Ecclesiastical censures, imprisonment, recognitiones.

To change Monies, to be expended for Exequies and the Feasts, to public or private Lectures, or to other uses.

To change Monies, given to Choristers and Singing Boys, or other Ecclesiastical services, to other uses.

To Expel and amove Masters, Provosts, Presidents, Fellows or Scholars, and put in others into their places.

To take Relinquishments of any places of Office and to substitute others.

& investigandum: Criminosos ac delinquentes, socordes & ignavos, atque culpabiles, condignis pœnis, usque ad dignitatum, Societatum ac Officiorum suorum, privationem, & Stipendiorum, proventuum & Emolumentorum suorum quorumcunque sequestrationem, vel quamcunque aliam congruam & Competentem Coercionem puniendos & coercendos atque ad probatiores vivendi mores, modis omnibus quibuscunque id melius & efficacius poteritis reducendos; contumaces autem & Rebelles cujuscunque Status & conditionis fuerint, (si quos inveneritis,) tam per censuras Ecclesiasticas quam etiam Incarcerationem, ac Recognitionum acceptionem, & quæcunque alia Juris Regni nostri remedia composcendos. Pecunias impendendas quot-annis in exequias & Convivia, in Lectiones publicas vel privatas ad alios usus magis convenientes aut in alias formas convertendas. Pecunias autem in aliquo Collegio Impendendas ex Fundatione ejusdem Collegii in Choristas, Cantores, & alias Impensas, ratione quotidiani Servitii, ut vocant, Ecclesiastici, aut in pueros Grammaticales ad alimentum sociorum vel Scholasticorum ad Philosophiam, vel alias artes discendas, in eodem vel alio Collegio Constituendos, convertendas. Magistros, Præpositos, Præsidentes, Socios, vel Scholares quoscunque illis Officiis indignos, non proficientes, Statutis Collegii, vel Commodis Reipublicæ, & bonarum literarum id exigentibus, expellendos & amovendos, & alium, & alios in amotorum locos præficiendos, & substituendos. Cessiones præterea quorumcunque, Præposituras, Magisteria, Præsidentias, Gardianas, Societates, seu Officia in Locis prædictis habentium coram vobis factis seu exhibitis, Autoritate nostra admittendis, eaque vacare, & pro vacuis decernere,

&

& in loca, sic per cessionem aut alio quovismodo, vacantia, personas habiles & idoneas substituendas, & Collegia duo vel plura, sive nostræ, sive cujuscunque alterius Foundationis fuerint, si vobis ex utilitate Academiæ videbitur, in unum conjungenda; Cantarias, nominaque Cantariarum in quocunque Collegio fundata fuerint, & earum fundationes mutandas & alias Appellationes illis imponendas. Et fructus redditus ac proventus dictarum Cantariarum, ad Scholariam Exhibitionem assignandos, & dictæ Universitatis nostræ, & Collegiorum, & Aularum Incorporationes, Fundationes, Statuta, Ordinationes, Privilegia, Compositiones, Computus, & alia munita quæcunque exigenda, & recipienda, eaque diligenter examinanda & discutienda, formas Divinorum Officiorum, Disputationum, & publicarum Lectionum, Collationes quoque graduum & Honorum, qui Eruditionis erga proponuntur Studiosis, immutandas, & in Commodiorem rationem instituendam, nec non Injunctiones, & Statuta, quæ vobis pro Commodiore Ordine videbuntur idonea, Personis in eisdem degentibus nomine nostro tradenda & vice & Autoritate nostris inducenda & assignanda pœnasque convenientes, in eorum violatores infligendas, & irrogandas, Statutaque, Ordinationes, Consuetudines, Compositiones, si quas comperitis eisdem Contrarias, sive repugnantes tollendas & penitus annihilandas, Juramentum insuper obedientiæ & fidelitatis nobis & Hæredibus nostris debitis, deque renuenda, penitusque abneganda Episcopi Romani prætensa, usurpata, & fictâ Autoritate, & quæcunque alia Juramenta ex Statutis hujus Regni nostri præstari requisita, ab omnibus infra Loca prædicta constitutis exigenda & recipienda; Congregationes

§. 5.
To unite Colleges.

Or Chuntries.

To change the profit of Chuntries to Exhibitions.

To examin all Foundations, Statutes, &c.

To change forms of Divine Offices, disputationes, public Lectures, Collation of Degrees, &c.

To introduce and assign new injunctions and Statutes.

To inflict punishments on the violators of them.

To annihilate contrary Statutes, Ordinances, Customs and Compositions.

§. 6.
To abolish the Popes Authority.

To enjoy Oaths appointed by the Statutes of the Kingdom.

&

To call Convocations for the execution of the premises or any Reformation.

To examine and determine causes of instances.

To do all other things requisite in such like Inquisitions and Reformationes tho' not expressed, or special words were requisite.

For performing all which the King grants them his full power and Authority.

§. 7.

To promote the study of the Civil Law.

The King gives them his fullest and high Authority by his Absolute and Royal power to change the number of Students in Civil Law in New-College to All-Souls College and the Students of Arts in All-Souls to New-College.

& Convocationes Præpositorum, Gardianorum, Studentium, & Ministrorum hujusmodi, pro Executione præmissorum, aut Reformatione quacunque facienda; Conciendas & Convocandas. Causas etiam Instantiarum Examinandas, & sine debito terminandas, ac omnia & singula alia quæ circa hujusmodi Visitatationis, Inquisitionis, seu Reformationis totius Academiae Negotia, sive hic expressa fuerint sive non expressa, quæ necessaria fuerint, seu quomodolibet opportune facienda & exequenda, vobis & singulis vestrum, de quorum doctrina, Morum & Concilii gravitate, ac in rebus gerendis fide, & Industria, plurimum confidimus, Vices nostras Commitimus, ac plenam, tenore præsentium, Concedimus Potestatem, etiamsi ejusmodi sunt quæ specialia verba requiruntur; cum cujuslibet congrue & legitime coercionis potestate. Et quoniam Studium Juris Civilis non solum, jam aliquot Annos deferbuisse in Academia nostra *Oxonienſi*, verum etiam propemodum extinctum esse nobis Indicatum est, præcipuam vobis omnibus curam, & sollicitudinem imponimus, ut quibus poteritis viis & modis illud excitetis, & amplificetis cui studio, ut possitis, amplius mederi & fructu laboris ac diligentiae Juventutem ad illud accendere, plenissimam ac Summam Autoritatem, per Absolutam & Regiam nostram Potestatem vobis Concessimus; Universum numerum in Lege Civili Studentium in Collegiis Beatæ Mariæ, Vocato *The New College of Oxford* in Collegium Animarum, & universum numerum in Artibus Studentium in Collegio Animarum, in Collegia prædictum Beatæ Mariæ commutandum transferendum & Constituentum, prout vobis commodissimum fore videbitur, sic ut in Collegio Animarum tantum illi sint qui
Legis

Legis Civilis Studio vacabunt, & in Collegio Beatae Mariae praedicto, illi tantum sint qui Artium & Verbi Dei Studio posthac semper incumbent: Dedimus quoque vobis Authoritatem, Collegium Medicinæ in aliquo idoneo loco dictæ Universitatis Constituendi; ac Deputandi aliquod unum Collegium illi Studio quodcunque vobis videbitur, & eos Socios in illo Collegio sic Medicinæ deputandos, qui ad Medicinam Studium suum velint convertere, si ad hoc per vos idonei Judicabuntur, Socios Collegii nostri Medicinæ faciendos; Eos vero qui nolunt sequi illam Artem vel ad eandem minus idonei judicabuntur, in alia Collegia transferendos vel pensiones Magistro sive Sociis illius Collegii assignandas. Mandantes omnibus & singulis Vice-comitibus, Majoribus ac Ballivis ac quibuscunque aliis Officiariis, Ministris, & subditis nostris, quatenus vobis, & cuilibet vestrum, in & circa Præmissorum Executionem, effectualiter assistent, auxilientur, & suffragentur: Aliquo Actu, Statuto, Ordinatione, Provisione, Proclamatione, sive Restrictione inde in Contrarium factis, Editis, Ordinatis, Proclamatis, sive Provisis, aut aliqua alia re, Causâ, vel Materia quacunque in aliquo non obstante. In cujus rei Testimonium, &c. Teste Rege apud *Westmonasterium* Octavo Die Maii Anno Regni *Edvardi Sexti Tertio*.

So that in All-Souls College none be but Students of Civil Law, and New-College Students in Arts.

To Depute a College for Physicians.

§. 8.

Command to all Sheriffs, Majors, Bailiffs and other Officers and Subjects to assist the Commissioners, &c. in the Execution of the premises.

Non obstante of any Act, Statute, Ordinance, Provision, Proclamation or Restriction whatever to the contrary.

Per ipsum Regem, &c.

In this Commission these particulars may be observed; First, that in the Preamble, the King lays as a Foundation, that he is the Supreme Head under Christ in Earth of the Church of *England* and *Ireland*,

§. 9.

The Authority of the Commission.

so that by vertue of that Supremacy, and by his Absolute and Supreme Authority, which in other places of the Commission are expressed, he appoints this Visitation, and the persons within Named his Delegates, and Commissioners: which of it self, if there were not most numerous other Presidents, and the necessity of Executing Justice, which the King cannot personally do in all places, is sufficient to Confute that Ignorant Assertion of a *Philonomus*, that the King cannot Commissionate others to Execute his Authority.

What places
are to be Visited.

Secondly, As to the Subject Matter of the Visitation, it is for the Colleges of *Windfor* and *Winchester* and the Dioceses of *Oxford*, and the University, and all the Colleges of the same, and by parity of Reason such Commissions may be Extended to any Lay or Religious Persons, Members of Societies, and Corporations within the Kingdoms of *England* and *Ireland*, that are of the same kinds of Foundation.

The persons to
be Visited.

Thirdly, As to the persons, the University is to be Visited in the Head and Members, so that the Vice-Chancellor and all the Heads of Houses, as also Fellows, Scholars, Students, and all that bear any Office, and all persons residing in the Colleges, &c. are within the purlieu of this Visitation.

The matters to
be enquired
after.

Fourthly, The matters to be enquired of and Regulated are, the State of the Colleges, which word is very Comprehensive, as in several particulars are after branched out. Also the Study, Life, Manners, Conversation, and Qualification of the persons. And this Enquiry is to be made by all the Methods or Ways, that the Commissioners can best effect it by.

Fifthly,

Fifthly, The persons punishable are reckoned up the Criminals, and Delinquents; words of a large Extent, as Comprehending Offenders against the Laws of God, and the King; to these are added the Idle and Slothful Students, and generally all who do any thing blame-worthy.

The nature of the Crimes to be punished.

Sixthly, The punishments the Commissioners may inflict, are the Deprivation of their places as Master-ships, Presidentships, &c. their Fellowships and other Offices, and the Sequestration of their Stipends, Profits and Emoluments whatsoever; the good ends for which such punishments are inflicted are expressed, to compell them to more upright manners of living.

The punishments, Deprivation and Sequestration.

Seventhly, We may also note the special punishment of such as are contumacious and obstinate or Rebellious, as it is expressed. These of whatever state or condition they be are to be compelled to obedience by Ecclesiastical Censures, as also by Imprisonment, Recognizances and all other remedies the Laws of the Kingdom appoint:

Contumaces & Rebels.

Punishment by Ecclesiastical censures, imprisonments, &c.

Eighthly, Then follows a power to Convert the Monies Yearly Expended for Exequies and Feasts, that is, such as had been given for Obits, Diriges, &c. to the maintainance of public or private Lectures, or other more convenient Forms or Uses.

Changing of Charities to other uses than at first designed

Ninthly, The Monies also to be dispended by the Founders appointment upon the Choristers, Singing Men, and other matters relating to the Dayly Ecclesiastical Service, shall be Converted to the Teaching the Grammar Youth, the Commons of the Fellows or Scholars, to the Learning of Philosophy or other Arts, &c.

Power of Expelling and substituting others in their places.

Tenthly, To Expel and Amove all Masters, Provosts, Presidents, Fellows or Scholars whatsoever, that are not worthy of their Offices, or not proficient: If the Commissioners could do it by colour of the breach of the Statutes of the College, or Judged it to be for the benefit of the Common-weal, or of Learning; and power to prefer and substitute another and others in the place of the person removed, and to admit the resignations of whatever Provostship, Mastership, Presidentship, Guardianship, Fellowships, or Office in the said places, and to Vacate or declare void the same, and to substitute others in their places.

To unite Colleges and translate Students of one faculty from one College to another.

Eleventhly, Then they have power to unite two or more Colleges into one, whether of the Kings or any others Foundation, if it appear to them to be for the profit of the University, and this by the Kings Absolute Authority. As likewise to Translate Students of one faculty from one College to another.

Altering form of Disputations, Statutes, &c.

Twelfthly, Also the power of altering Forms of Disputations, conferring Degrees, and of Divine Offices, to Introduce and Assign Injunctions and Statutes, and wholly to Annihilate Statutes, Ordinances, Customs, and Compositions contrary to them, and this as to the Commissioners shall seem fit for the Regulating, Reformation and good order, &c. of the University.

Note this.

Thirteenthly, Yea to exercise all and singular other things concerning Visitation, Inquisition and Reformation, which may be necessary, or in any wise fit to be done, altho' not expressed, yea tho' the power might require special words.

Lastly,

Lastly, It is to be considered, that all these powers are given them, notwithstanding any Act, Statute, Ordinance, Provision, Proclamation, or Restriction to the contrary; so that in this one Instance the Kings dispensing power to be put in Execution by Commissioners is most amply manifested, and whatever power the King can give to Commissioners, he may Execute himself by his Royal Mandate, and if he can dispense with the Statute, surely the obligation of an Oath to observe that Statute ceaseth, as I shall largely shew hereafter.

The Kings dispensing power asserted by this Commission.

Understand it in matters wherein Mandates have been used.

By the Execution of this Commission, whereof I shall now treat, it will be apparent, that the design of this Visitation was to abolish the Catholic Religion there, and plant the Reformation in the University, which they did by changing the Magistrates or Governing part of the Colleges, disannulling the old, and making new Statutes, censuring and punishing all whom they found culpable, according to the Articles which they published, to abolish the power of the Bishop of *Rome* and present Clergy, and set up the Kings Supremacy. Which Articles I am informed are extant tho' I have not yet been so fortunate as to have procured any Copy of them.

I shall now Abreviate the proceedings of the Commissioners in that Visitation, by which it will appear, how merciful our King hath been in this last Visitation comparatively to what was then done.

§. 10.

What the Commissioners did in this Visitation.

First, The King, previous to this Visitation, in his Mandate to the University Commanded, that no Graduate should proceed to the Election of a President, or Fellow of any College, or do any Act that should hinder the Visitation, so that during the Visitation no Statutes were observed, and none of the

Wood *Antiq.*
Oxon. fol. 269. a.
In Turri Schol.
N. 17.
The Suspension of Elections and College Acts during the Visitation.

University

Fellows made
contrary to
Statutes.

The Execution
of the Statutes
Suspended.

Id. fol. 270. b.
Concerning
Choristers and
Singing-Boys.

§. 11.
Id. fol. 271. a.
Anno 1549.
The Visitors
make a new
Book of Sta-
tutes.

University could attain any Office without consulting the Visitors: and my Author saith, that the Commissioners, especially *Cox*, put in their Friends and Dependents every where into places, as he Instanceth in *Maurice Ley* an Irish Man, who was made a Fellow of *Exeter College* contrary to their Statutes, and *Edmund Cooke* Esquire, wholly Ignorant of University Learning, made Fellow of the same College; so *George Cartwright* Born in *Nottinghamshire*, thereby Secluded by the Statutes, was made Fellow of *Corpus Christi College*. And by the Mandate aforesaid the Execution of the Statutes of the University were Suspended, by which means, the Jurisdiction of the Masters of Colleges and other University Magistrates being in a manner Abrogated, it might remain in the Visitors power only to inflict punishments.

When the Commissioners had deprived the Choristers and Singing Boys of their Stipends, the Towns-men representing the dammage it would be to them, by reason their Children were thereby provided for, This was something mitigated.

Some of the Chantries were converted to Stipends, but mostly those in Parish Churches, whereof some were of the Patronages of Colleges, were sold away. But of these things and the change of Divine Service I shall not speak because they were according to the Reformation through the Kingdom, after the Book of Common Prayer was Established.

§. 11. The Visitors made a new Book of Statutes which were called King *Edward* the Sixth's Statutes, which altho' in the most part they were contrary to the Ancient Statutes of the University, yet they were in force till those were made which now are used.

Id. fol. 271.b.
The destruction
of Books.

I pass by the great destruction made of Books in the public and private Libraries, where few that had any Red Letters, or were Writ by any in the two last Centuries escaped the Fire or worse uses, tho' they were Books of Divinity, Astronomy, or Mathematics: The Books being brought in great heaps into the Market places, and publicly burnt; of which the Reader may peruse a sad Account in Dr. Heylin and Mr. Wood.

I shall omit the Cases of *Ralph Skinner* and *Gualter Haddon*, till I come to Treat of the Kings dispensing with Statutes.

☛ The severity of the Visitors continued from the Year 1549. to the Year 1553. 10. *Maria*, in which time by the absenting themselves, or Expulsion of so many Fellows, the Colleges were left very thin, the Writings, Bulls, Charters, and other Muniments, especially those granted from *Rome* were seized; the Registers and Repositories searched; the Monies taken from the Chests, where lodged in former Ages, to be in readiness upon any Streights the Houses might be reduced to. Yea they sold four or five public Schools to Towns-men, who pulled them down and converted the Materials to their own uses, and annexed the Grounds to their Gardens.

§. 12.
Id. fol. 272.
273, 274
The severe proceedings of the Commissioners.

So great was the subversion, that the Terms were altered from the periods used in former times, the Ancient Exercises, &c. as Lectures, scorned, and the taking of Degrees by some thought Anti-christian, and others neglected to take any by the apprehension, that there should be no use of them, and because the Stipends were withdrawn. But, says my Author, we are not to complain of the Violating of the Honors and Degrees in Learning, since Learning it self was Expir-

Terms and Lectures altered, and Degrees neglected.

Expiring and drawing it's last breath, the Schools being ruined and the Philosophy Exercises being taken away. Those who have a mind to Read the Ravage then made by the Visitors, either by their Covetousness or Connivance, may find them fully related in the foregoing Authors. For, a Reformation being designed by the King, there was no place in the Univerſity for the Unconformable.

S E C T. II.

The Visitation in Queen Maries Reign.

¶ 1. **A**Nno 1553. When Queen *Mary* came to the Crown, she took great Compassion on the Univerſity, as appears by her Letter, in which she sets forth the grievousness of the former Visitation, and she bestowed some Rectories upon it by her Charter. May 11. 1^o. Regni.

Wood fol. 274.
&c 275.
Wood Antiq.
Oxon lib. 1.
fol. 274. 275.
Pat. 1. Maria
part. 6.

Queen Maries
Visitation.

See for the Visi-
tation of Cardi-
nal Pool Anno
1557. a.

Large account
in Fox A&S and
Mon. Vol. 3.
Edit. 1640.
fol. 762. to 780.

Neither did she omit to Exercise her Authority in Visiting the Univerſity in restoring the Roman Catholic Religion, as she did through the Kingdom. The first that Visited was *Steven Gardiner* Bishop of *Winchester*, who was Local Visitor of *New-College* and *Corpus Christi* and *St. Mary Magdalen College*: He appointed for his Deputies *Sir Richard Read* Kt. and *Dr. George Wright* Arch-Deacon of *Oxford*: Upon the 26th. of *October* they Visited *St. Mary Magdalen College*, and *Dr. Haddon* the late President, of his own accord did quit the Presidentship. *Thomas Bentham* the Dean, and several others were Expelled as had been done in *New-College*. And
the

the Society of *Magdalen* College were so averse from the Roman Catholic Religion, that not only they got neither Altar or Holy Vestments, but none of the Fellows came to Mass, and the very Clerks and Choristers would not perform their Offices, so that the Visitors were forced to have all Holy Offices performed by their own Priests: they punished the Juniors that refused, either with striking them out of Commons, or Scourging them: and one *Aldworth* Bachellor of Art for Contumelious Usage of Priests, and coming in unseasonably to the Mass of the Exequies of King *Henry* the Sixth, was Comanded, that every Day he should be at Mass, and kneeling at the South Pillar in the middle of the Church, should perform his Prayersto the Example of others.

Ibid. fol. 13. b.

Punishments
inflicted by the
Visitors.

The same Commissioners found the President of *Corpus Christi* College *Robert Morwent* and the Senior Fellow *Henry Wallis* very observant, who brought to light the Holy Vestments, Cushions, Silver Vessels, Candlesticks, and other Ornaments which they had hid in King *Edward* the Sixth's time, and excepting *John Jewel* after Bishop, I find none left that College: but from the other two, besides the Fellows Ejected in *Edward* the Sixth's time, about Eighteen or Twenty this Year and the next were removed.

Id. fol. 276. a.

Anno 1556. 3 & 4 Ph. Mar. Cardinal Pool appointed an entire Visitation of the University of Oxford, and the Visitors were *James Brooks* Bishop of Gloucester, *Nicholas Ormanet* of Padua, in good esteem with *Julius* the Third, and Dator to him or *Marcellus* the Second, *Henry Cole* Doctor of Laws, Provost of Eaton, *Robert Morwent* Doctor in Divinity

§. 2.

Id. fol. 278. b.

Cardinal Pools
Visitation.

Pix. M.M. n. 22.

Two Questions
propofed by the
Visitors, Firſt,
whether their
Statutes were
obſerved.

President of *Corpus Chriſti* College and *Walter Wright*,
Arch-Deacon of *Oxford*. Theſe proceeded upon
Thirty Two Questions, two of which were the moſt
Material. Firſt, Whether the Foundations, Statutes,
and Laudable Cuſtoms of the Univerſity, and of
every College and Hall, were obſerved by all and
ſingular that were concerned, and if it were answer-
ed Negatively, they were required ſpecially to ex-
preſs, which were not obſerved and for what
cauſe.

Second, whe-
ther after the
Reformation
any things were
uſed contrary
to the Canons,
&c.

The Second was, whether in the time of the
Schifm any thing was appointed or brought into uſe,
which was againſt the Ancient Canons or Ancient
Foundations, Statutes, Privileges and Cuſtoms; and
to this, if they Answered Affirmatively, they were to
expreſs particularly, what they were, and for what
cauſe.

The Viſitors following the Example of thoſe
that Viſited in King *Edmund* the Sixths Reign
purged out of all public Libraries all Books
which maintained the Proteſtant Doctrin, and thoſe
in private Libraries they burnt, and either Punished
or Expelled the Poſſeſſors. They certified the Car-
dinal, eſpecially of the Defects of the Univerſity Sta-
tutes, and he being Chancellor, inſtead of *Mafon*,
that laid down the Office, ſent a Book of Statutes to
Mr. *Raynolds* the Vice-Chancellor, and Commanded
him, that they might be in force, till there being
joyned with him ſome in every Faculty, they might
determin which were to be Antiquated, and which to
be retained, which being ſo Reviſed had the Sanction
of the Chancellor and Convocation; which being
ſtrict againſt the Reformed, drove many from the
Univerſity. Our Author Notes, that the Lectures
were

In E. p. 38.

§. 2.
The Cardinal
appoints Sta-
tutes.

were less frequent in this Queens time, as well as in King Edward the Sixths, and fewer received Degrees, which may be Imputed to the Changes made in Religion in their short Reigns: but he saith the great care of the Magistrates of the Universities in this Queens Reign, was to recover the profits of the Societies and to Repair their Buildings and the Schools.

In this Third and Fourth Year of King Philip and Queen Mary, Cardinal Pool Visited the University of Cambridge as he was Legate, to whom the Pope Committed the Visitation and Reformation of the Universities, called General Studies. This Visitation the Cardinal performed by Delegates, and I find one Robert Brassy, Master of Kings College, urged, that his House was wholly reserved to the Discretion of the Bishop of Lincoln, not only by the Kings Letters Patents, but also by the Grant of Confirmation of the Bishop of Rome himself, under a Penalty, if he should suffer any Stranger to Intermeddle; But the Commissioners Answered, that they were fully Authorized for the Order of the matter by the Cardinal, out of whose Jurisdiction no place nor person was Exempted. So that tho' he persisted the next Day in his Allegation, yet he and the Students submitted, and were all Sworn and Examined to the Interrogatories propounded to them, yet some of them Swore conditionally, so as their Faith given to the College were not Impeached thereby. Something like the Satoo of some Members of St. Mary Magdalen College, that they would yield obedience, saving the Right of Dr. Hough, which was prudently denied to be Admitted by the Lords Visitors.

I now pass to the Reign of Queen Elizabeth.

Cui Papa
commisit Visi-
tationem & Re-
formationem
Studiorum Ge-
neralium.

Fox Acts and
Monuments,
Vol. 3. p. 763.
766.

S E C T. III.

The Visitation in Queen Elizabeths Reign.

§. 1.
Fel. 281. b.

Queen Elizabeths Inhibition, not to Elect any Heads of Houses, Fellows, Scholars, &c.

ANno 1559. Queen Elizabeth intending to Visit the University of Oxford Writ to the Magistrates of the same, forbidding them to proceed to the Election of any President, Fellow or Scholar, or of any Officer of the University, and forbid all Alienations or Changes of Possessions, and all other things to be done by the University, except what was necessary for the Cultivating their Lands, till the Visitation: and this she did because some were so forward to begin a Restoring things to the condition they were in, in King Edward the Sixth's time before her Order. By which the Queens Authority and Circumspection are clearly discovered.

§. 2.
Queen Elizabeth appoints Visitors.
Wood lib. 1.
fol. 282.

After some few Months she appointed her Visitors, viz. Richard Cox Bishop of Ely, John Williams Baron of Thame, but he Died in October, John Mason Kt. sometimes Fellow of All-Souls, and several Years after Chancellor, Thomas Benger Kt. William Kingsmyll Esq; John Warner Custos of All-Souls College, Walter Wright Doctor of Laws, Arch-Deacon of Oxford, John Watson Master of Arts, Chancellor of St. Pauls London, Robert Benger Esq; &c. to whom she Commands they should Act with all Humanity, and abstain from all Roughness. These Visitors coming to Oxford cast out of the Chappels of the Colleges and Parish Churches all things that related to Superstitious Worship, as it was Styled, that is,

is, the use of the Roman Worship, recalled those that were banished, or put out in Queen *Maries* time for Religion, and Abolished most of the Statutes made by Cardinal *Pool*, and restored those of King *Edward* the Sixth.

To omit other things in the Visitation, besides that the Earl of *Arundel* did quit the Chancellorship, these following Heads of Colleges or principal Members, were removed and some of them Imprisoned.

§. 3.
Earl of *Arundel*
Chancellor
quits his Office.

As Dr. *Richard Marshal* Dean of *Christ-Church*, for denying to own the Authority of the Visitors, was not only Expelled, but sent Prisoner to *London*.

The Heads of
Colleges and
others Expelled
of *Christ-Church*.

Also Dr. *William Tresham* Canon of the same, for denying the Oath of Supremacy was Expelled, as also Dr. *Richard Smith* Canon there, Dr. *Thomas Raynolds* Warden of *Merton* College, was by the Queen, then at *Hampton Court*, deprived of his Wardenship 4th September, and three Days after, the Sentence was declared by three of the Commissioners, and after a short time he Died in Prison.

Of *Merton*
College.

Thomas Coveney President of *Magdalen* College was Expelled, for that he was not entred into Orders, and Dr. *William Cheadsey* President of *Corpus Christi* College was Expelled from that, and his Canonship of *Christ Church*, and *Robert Banks*, who had been Ejected in Queen *Maries* Reign because he was Married, was substituted in his place.

Of *St. Mary*
Magdalen Col-
lege.

Also Dr. *William Wright*, Master or President of *Baliol* College, was Expelled, and Dr. *Babington* substituted in his place.

Of *Baliol* Col-
lege.

Mr. *John Smith* Provost of *Oriel* College was Ejected, tho' he had liberty to live in the House after, but in the next Year he lost the Lady *Margaret* Lectu e-

Of *Oriel* Col-
lege.

Of *Queens*
College.

Of *Trinity*
College.

Fol. 283. a.
St. *Johns* Col-
lege.

Lectureship, and Mr. *Hugh Hodgson* Provost of *Queens* College, two Years after, either relinquished the place, or was Expelled: Mr. *Thomas Shyhurst*, President of *Trinity* College, was Expelled, and Mr. *Teldard* placed in his room.

Mr. *Alexander Belsyre* Master of *St. Johns* College and Canon of *Christ-Church* was also Expelled, and Mr. *William Ely*, lately put in his place, a little while after was Expelled: so a few Years after Mr. *William Marshal* Principal of *St. Albans* Hall was forced to surrender, and so Mr. *William Alan* Principal of *St. Mary* Hall, as also *George Ethridge*, *Regius* Greek Professor, and *James Dugdale*, Master of University College, two Years after was Expelled by the Visitors and *Thomas Key* put in his place.

Fol. 283. b.

Besides these Heads of Colleges in *New College*, two Doctors and three Bachelors of Civil Law, one Doctor of Physic, one Bachelor of Divinity, and fourteen Fellows were Expelled, some removing to Religious Houses beyond the Sea, and Mr. *John Munden* returning, being discovered to Secretary *Walsingham*, was Executed at *Tyburn*.

In *St. Johns* College seven Fellows were Expelled, besides several others Imprisoned at *Witch*, and many others not named.

Those that have a mind to see the Names of Great numbers of the rest Expelled from other Colleges, and suffering Death for returning into *England* may consult the Register.

Reg. G. G. fol.
26.
Reg. I. fol. 198.
O. 199. O. Reg.
Coll. Magd.
fol. 29.

I shall now give a short account of what Dr. *Parker* advised from *Cambridge* concerning the Visitation there.

I find

I find Two Letters, from Dr. *Mathew Parker*, afterwards Arch-Bishop, to Sir *William Cecyl* then Secretary and Chancellor of the University of *Cambridge*, Dated 10. *March*, and Endorsed on the back Dr. *Parker* 10. *Martii* 1559.

§. 4.
Paper Office
Ecclesiastica
1550. to 1559.

Among other Expressions he hath these words, 'The Colleges needed a Visitation. that Queen *Mary* immediately upon her quyet gave out Authority to the Chancellor (Bishop *Gardiner* :) he forthwith sent his Chaplain (*Watson*) with Instruction to every College, and as then I could gather, to report to him in what State every College stood, and further peradventure upon cause, to have the Masters and others assured *de coram sistendo & Interim bene gerendo* till further Order.

By this and some other Letters I find, to and from Sir *William Cecyl*, who was the great Minister of State in Queen *Elizabeths* time, I observe that what was done in *Oxford* by the Visitors was likewise pursued in *Cambridge*, and that the Masters, Governors and Fellows had a very hard time in the Reigns of King *Edward* the Sixth, Queen *Mary*, and Queen *Elizabeth*. Conformableness to the Religion of the Prince, being the Touch-stone and the prime Capacitating Qualification that secured Honors and Places in the Universities.

The other Letter is Dated *March* the 30th. and Ticketed 30. *Martii* 1559. Dr. *Parker* to Mr. Secretary. Which I shall Transcribe at length that the Reader may take notice of his way of Writing, and the Dialect of that Age.

Pleaseeth yt your Honorables goodnes upon th^e occasion of sending up to your Honor for the matter which Mr. Vice-Chancellor Wryteth of. I thought it

'it good to signifie to you, that the matter which
 'ye have Delegated to us is in hand, with as good Ex-
 'pedition as we can make by reason of th' absence of
 'some who were meet to be Commoned with.
 'Though some dout is made, whether your Autho-
 'rity of Chancellorship extendeth to College Sta-
 'tutes for any beyond Lymitation conteyned in
 'them, so may they dout of your Delegatum.
 'Though Bishop Gardyner wold not so be restreyned
 'in his doyings whether upon warrant of the Quenys
 'Letters of Commission (the Copy * whereof I
 'sent to you) or by Authoritye of his Office I leave
 'that to your Prudence to Expond. Our Statutes and
 'Charters Prescribe here to Officers, that they must
 'in Pleees proceed *summarie & de plano sine strepisu*
 '*Judiciali*, that Scholars may be soner restored to
 'their Bokes. Yet here be Wytts which being
 'thereto admitted w'd entangle matters *extremis*
 '*Juris apicibus*, that Controversies might be Infy-
 'nyte and perpetual never to have an end, but accord-
 'ing to our old Ancyent Customys, we shall procede
 'to hearyng with cutting of, all such superfluous and
 'perplex Solemnyties of their Cavillations, and so
 'refer the matter to your understanding to be reso-
 'lutely determyned as the last Clause of your Let-
 'ter pretendeth to wil us. And yff I shall perceyve
 'any like Incydent to be signified to your Honorable
 'wisdom, I shall be bold in secretys to Wright it.
 'Lesse things borne bi parcyalyties might prevayle
 'under your Authoritye not rightly instructed, and to
 'avoid som Stomake that ellys might be taken.
 'Without dout Sir th' Universitie is wonderfully
 'decayed, and if your Visitation entendyd be too
 'stoutly Executed in some like sorts as hath been
 'practised

* This I cannot
 find tho' I have
 searched dili-
 gently.

'practised, that wil I fear so much ruffle the State
'thereof, that it will be hardly recovered in Years,
'and yet Authority must bridel willfull and stub-
'born Natures and hie time it is here. I trust the
'prudence of the Visitors, for good wil toward you,
'wil diligently note how ye receyved the Universi-
'ties after others, for comparison of the sequel, wel
'hoped for at your hands. Except that be looked to
'in time the Quenys Majestie shal not have half suf-
'ficient Mynisters for hir yerres (which I pray God
'may be many to uphold Christes Fayth in her
'Realms) Youth here is of some Inclination if they
'had but three or four good Hedys Resident to lean
'unto, to comfort them, against som fower talkers
'in their stoutness, but time must be expected and
'Godys furderance craved: Sir I pray you pardon
'my boldnes and not to be offendyd though I wright
'thus homly and in English Letters, while paravent-
'ure I might busye my head to wright *Latinus*,
'somewhat to avoyd offending of your exact and ex-
'quysite gift in your Latin Tonge, I might chance
'to wright *obscurus* not *significans*, and so the
'longer to deteyn your perusing these smal Causes
'to hynder your others much more weighty, which I
'beseeche Almighty God to prosper:

From Corpus Christi Collage in Cam-
boige the 30th Day of March. M. P.

I have Transcribed this according to the spelling
of this noted Prelate, who hath shewn his Learning
in Antiquities, and his Zeal for the Protestant Reli-

F f

gion

§. 4.
*Antiquitates
Britannicae, &c.*

gion in his Books. Yet I doubt not but this Age will think his way of expressing himself in English not very Polite. I shall not Comment upon his Letter, which tho' in somethings obscure, yet is plain enough to be understood, as to what was his General intent and design.

This Visitation of *Cambridge*, in the first Year of Queen *Elizabeth* was by Commission under the Great Seal to Sir *William Cecyl* then Chancellor of the University of *Cambridge*, and to others, as Mr. *Pryn* in his *Oxford Plea refuted*, pag. 34. hath given a short account of.

§ In the Queens Letters before the said Visitation to Sir *William Cecyl* are these expressions. 'Because the chief Order and Government of Our University of *Cambridge* appertaineth to you, being the Chancellor of the same, &c. We thought meet to will you in Our Name to give signification, that We mean very shortly, with your Advice, to Visit the same by some discreet and Meet persons.

So that here we find whatever power the Chancellor hath, it is in subordination to the Sovereign, and tho' they may take the advice of their Subjects in places of Government under them, yet the power of Visiting still proceeds, and is derived from them, as all along I hope I have proved.

Anno 1562. 4^o Eliz. There happened a Sedition in *Merton College*. In January Dr. *James Geruace* the Custos or Warden having voluntarily quit his place, the Fellows gave in the Names of five to the Arch-Bishop their Visitor, whereof two or three had never been of their Society, whereas Anciently according to their Statutes they had used to name only three bred in the College, whereof one was

§. 5.
Wood *Antiq.*
Oxon. lib. 1.
fol. 284. b.
An account of
the Visitation
of *Merton Col-*
lege in *Oxford*.

to be put into the place of him that was Dead or Resigned.

The Arch-Bishop resented this, and rejected all those named by the Fellows, and before the end of *March* Nominated *John Man* sometime Fellow of *New College* to be the Warden, who came to *Oxford* the 30th. of *March* accompanied with *Dr. Babington* the Vice-Chancellor, *Dr. White* Warden of *New College*, but the Fellows refused to Admit him, so that on the 2d. of *April* he came accompanied with the Vice-Chancellor, and *Henry Norris* of *Witham*, and *Anthony Foster* of *Cumnor*, and with much difficulty the Gate was opened, *Mr. Willi. Hawle* the Senior Fellow and others opposing, upon this the Arch-Bishop, upon the 16th. of *May* following Cited them all to appear in their Church, to be Visited by himself or his Vicar General and by the said Vicar General of the Arch-Bishop, *Man* was Confirmed and *Hawle* was Ejected out of his Fellowship.

By this it appears what power the Local Visitor had to Nominate and settle the Head of the College at his pleasure even contrary to the Ancient Statutes of the Society, how much more may we conceive, that the King hath power by his Mandate to Nominate and appoint the Head of any College as Sovereign and Supreme Visitor. The observation upon it.

The Commission for Visitation continued still, and in it great changes were made till all were reduced to a Conformity to the Queens Laws and pleasures, several Statutes were revoked, others amended or explained, all which great changes were by virtue of the Queens Commission.

§. 6.

Wood *Antiq.*
Oxon. lib. 1.
286.

Before I proceed to any other Visitations I shall give a short account of the great States-man Sir *William Cecyls* proceeding, upon a disorder in *St. Johns College* in *Cambridge*, wherein we may note by what Steps he being Chancellor thought fit to proceed by the subordinate Governors with a sufficient Menace, that, if that would not be effectual, he would obtain the Queens Authority for a Visitation.

Bundel Ecclesiastica 1560. ad 1569.
In the Paper Office.
Secretary *Cecyls* Letter about Non-conformists in *Cambridge* threatening a Visitation.

3 December the 13th. 1565. Secretary *Cecyl* Writes to Dr. *Stoke* Vice-Chancellor of *Cambridge* concerning some of the Younger Fellows, that in *St. Johns College* Chappel left off the use of the Surplice, That the Vice-Chancellor Confer with the President, and if they can do it by their Ordinary Authority then to proceed; if not, then he Writes a Letter to the Bishop of *Ely* Visitor in Ordinary to rectifie it, then follows.

If there shall no good come of those two means, then I am determined to resort to the Authority of our Sovereign Lady the Queens Majesty: 'In whose power by Prerogative the Government of all manner of Subjects doth belong to reduce them by sharpness to the Obedience of her Laws and Commandment.

This was the Judgment of that Great States-man who may be presumed to have well understood the Law and the Prerogative in that Case.

In his Letter to the Bishop of *Ely* he Writes, that 'he had privately imparted the matter to her Majesty for his discharge by whom he hath been straightly charged to see Reformation, and with speed and severity, which he hath promised her Majesty to do, 'altho' he will first seek it by ordinary means. — If other-

otherwise it should fall out he would for his discharge refer the whole to the Queens Supreme Authority, whereupon must needs follow Cause of Repentance to the Authors of that Garboyle.

Here note the Authority of the Prince.

By which it is manifest, that whatever Ordinary power was lodged in the Bishop of *Ely* as Diocesan Visitor, or the Chancellor and other Magistrates of the University, yet the Queen, *Jure Regio* supercedes all and takes Cognizance of the whole matter by her Commissioners, as occasion might require.

♣ In the Year 1568. The College of *Corpus Christi* made some disturbance about the Election of a President, the Story in short is thus. One Mr. *Robert Haryson* sometimes Fellow of the College there, was Expelled in King *Edward* the Sixth's time, Anno 1552. and *Thomas Greenway* was made President, who resigning, the Fellows Elested *Haryson* for their President, tho' the Queen by her Mandate appointed Mr. *William Cole* who had been Fellow there, and banished in Queen *Maries* time. This Mandate they slighted, and Elested as aforesaid, with which the Queen being acquainted, she declared the Election void, and expressly Comanded them to Admit *Cole*. The Fellows reply'd, that they had done nothing but according to their Oath, upon which the Queen being provoked that her Mandate was not obeyed, she sent Dr. *Horn* Bishop of *Winchester* their Local Visitor, and Comanded him to see *Cole* Admitted. The College shut their Gates against the Bishop, who caused them to be opened, and going to the Chappel and calling the Senior Fellows Admonished them forthwith to Admit *Cole*, and they resisting he openly pronounced them Expelled putting others in their places, who he knew would obey the Queens Comand

§. 7.
Disturbance about Election of a President in *Corpus Christi* College.
Wood Antig.
Oxon. lib. 1.
fol. 290. n.
The Queens Mandate refused at first, but after obeyed.

The Queens Mandate to the Bishop of *Winchester* to Admit *Cole* President of *Corpus Christi* College contrary to the Election of the Fellows.

*In fasciculo
Chartarum in
Abba Aula.*

The Queen ap-
points Visitors.

mand, and so placed him President, and the Queen Commanded the Chancellor of the University, the Bishop of Winchester Sir William Cecyl Secretary of State, Thomas Cooper, and Lawrence Humphrey Doctor of Divinity, and George Achworth Doctor of Laws, that they should Visit the College, and against the ill deserving they should proceed either by lighter punishments or by Expulsion, by which they Ejected the Romanists, and placed Protestants in their Rooms, saith my Author.

The like method the Visitors took in other Colleges, Expelling all that Renounced not the Roman Religion, Suspending or Imprisoning others who offended less, and Mr. Wyot Sub-prior of Exceter College was Expelled and Imprisoned, Mr. John Neal Rector Expelled.

*Reg. Coll. Exm
fol. 96.*

§. 8.

What the Earl
of Leicester did
as Chancellor.

K. K. fol. 8.

*Regimen Aca-
demicum omni
propemodum ex
parte Immuta-
vit non nullos
quidem in
meliorem, rebus
vero plerisque
in peiorem form-
am redactis.*

*Wood Antiq.
Oxon lib. 1.
fol. 290. b. &
291. a.*

Anno 1569. 12 Eliz. Robert Dudley Earl of Leicester, being Chancellor he altered much of the Government of the University, saith my Author, changing something for better, but most what for the worse, he abolished the old Form of choosing Proctors, he Named the Vice-Chancellor, not consulting the Convocation, which seldom was done in Ancient times, he was the first that appointed, that the Vice-Chancellor, Proctors and Heads of Houses should Convene and Confer about any matter that was under consideration, before it was proposed to the Senate of the University, and Decreed, that all public matters, especially those of greatest moment, should be expedited secretly by Scrutiny, and not as Anciently openly and by Suffrages before the Proctors.

In this particular it is to be noted, that Mr. Wood saith, the Visitation is to be ascribed to this Earl, and it is most clear, that whatever the Chancellor did

did or could do, was only as his power was derived from the Crown.

S E C T. IV.

A further Account of the Visitations of the Universities or single Colleges; together with the Alteration, Abrogating, or new Imposing of Statutes of the Universities by the Sovereigns.

IN pursuance of my designed Method, I shall with what brevity I can give an account of the more Modern Visitations of the Universities, or single Colleges, so far as I Judge they may conduce to the matter under consideration.

The Critical Reader is however desired not to censure me tho' in this Section I intermix some observations of the Royal power in Abrogating, Correcting, Amending or new framing of Statutes accordingly as it was Judged more convenient to the better ordering of the Body of the University, as to their distinct Oeconomy, or the conformableness of their Members to the public Laws of the Realm, or the Political Government of the Prince. Upon all which considerations, besides the Influence of private Councils, those that are conversant in the Histories of former Ages will find, that not only Visitations have been appointed, but that several Princes have been Induced to alter the Statutes.

¶ The true and adequate Reason of all which hath been and ever will be, because the Influence that the Universities have over the whole Kingdom is so great

§. 1.

The account of what is to be Treated of in this Section.

great, upon the account that they are the Nurseries not only of the Divines, but also of the Eminentest Gentry, and of the Professors of the Laws. So that if those Instructors, of the Learned hopes of the after Ages, be not conformable to the Laws of the Government, they may Create great disturbances to it, which it is the Wisdom of all Princes to avoid. Whence the fundamental Reason may be given why the Sovereigns have reserved this power, of Visitation of the Universities, and giving Laws, to themselves solely, as being most conducive to the Tranquility of their Reigns.

The Judicious Reader is likewise desired to consider why I intermix not only this particular superintendency of the Prince over the Statutes of the Universities with the Visitation of them or the Colleges, but likewise some matters more particularly relating to *St. Mary Magdalen College*: the reason of which is, because I would not disorder the Series of time, and likewise, that I would render this Section as Introductory to the next Chapter, wherein I shall particularly Treat of the Kings dispensing with University Statutes, for it seems to me a very natural consequence, that since the Sovereign can disannul, alter or amend Statutes, he may justly upon Emergencies Suspend the Execution of them by Mandate; There being no greater difference betwixt the Will and Pleasure of the Prince in both, but that in the one he declares his pleasure under his Broad Seal, by Commissioners of his own sole appointment to inspect and alter them; and in the other he by his Royal Fiat Commands the Execution of his pleasure. And what I bring in as to *St. Mary Magdalen College* I do that the unreasonableness of some of their Statutes may

may appear if there were no dispensing power in the Crown.

Having promised this, I now proceed.

Queen Elizabeths Letters Patents for confirming the Statutes of the University of Cambridge.

E *Lizabethe Dei Gratia Anglia, Francia & Hibernia* Regina, fidei Defensor, dilectis nobis Cancellario Magistris & Scholaribus Universitatis Cantabrigien. Salutem. Quanta rerum vestrarum cura nos perpetuo sollicitat, dum utilitati Academiae vestrae Studemus, non tam privilegia a nostra benignitate vobis concessa, quam legum & Statutorum vestrorum nova quaedam dispositio manifeste declarant. Quorum altero injuriis obistere, quieteque Studiis vestris incumbere, altero concordiae rectaeque reipub. vestrae gubernationi consulere possitis. De illo abunde satis a nobis est prospectum. Istud quidem licet jam diu a nobis inchoatum esse non ignoramus, ac leges interea exercendas vobis dederimus: usu tamen atque experientia optima Efficacique rerum Magistra edocti animadvertimus in illis aliqua esse correctione digna. Rursus crescente hominum audacia nimiaque licentia aliquas novas prioribus esse adjiciendas duximus, negotia enim quae de novo emerferunt, novo indigere auxilio facile cernimus. Nunc vero cum ista Omnia accurate ut speramus sunt absoluta & perfecta: ea a vobis omnibus cum ea qua decet obedientia, atque animi alacritate recipienda sunt. Leges igitur ac Statuta hoc libello conscripta, atque summa nostra regia Authoritate Sancita vobis in vestrum commodum mittimus ac promulgamus, diligenterque atque fideliter a vobis observanda proponimus.

§. 2.

A Transcript of Queen Elizabeths Letters Patents, Communicated to me by the Learned Dr. Brady.

The Queens care of the University, and her new disposing of their Statutes.

The Reasons for the need of correcting the Statutes.

The Queen appoints the Statutes by her Supreme and Royal Authority.

G g

Quod

The Queens
Command to
observe them.

The Queen will
exact an ac-
count of the
Governors of
the Colleges if
they observe
not the Statutes
and take not
care they be
observed by
others.

Quod dum feceritis illisque ut oportet ex animo parueritis, non solum a Deo optimo maximo & a nobis laudem & præmium expectabitis, verum etiam, una cum pietate atque optimarum artium non modico incremento, omnes gradus Academiæ in pulcherrimum Ordinem adducetis, illiusque famæ atque dignitati optime prospicientes florentissimam efficietis. At tandem, quod apud nos non minimi est momenti, exemplo vestro tanquam in omnium oculis & mente positi, reliquum populum nostrum ad consimilem legum nostrarum observationem ac ad pacem concordiam veramque obedientiam trahetis atque perducetis; digni regio favore, digni virtutis ac literarum præmio. Sed quoniam Exhortatio Liberorum excitat voluntatem, Mandatum Necessitatem facit nec omnes virtutis amore, sed plures pœnæ metu ad leges custodiendas coguntur: Omnibus igitur quibus iurisdicctio in hac parte competit, maximeque vobis qui potestatem publicam Academiæ exercetis vel Singulorum Collegiorum gubernacula tenetis. Mandamus ut & vos ipsi Statuta ista quatenus ad vos pertineant observetis, & a reliquis omnibus diligentiam in eisdem observandis exigatis illarumque executioni totis viribus incumbatis. Si vero (quod absit) favore, gratia, lenitate, vel incuria vestra eas contemni, negligi, vel non observari aliquando contigerit, Vos quibus illarum executio demandata est, quique aliorum gubernationem suscepistis, huius transgressionis reos indicabimus, atque a vobis exactam rationem illius rei exposcemus. Dominus Jesus, & voluntatem in vobis has leges custodiendi, bonasque literas pietatemque discendi, & facultate easdem ad ipsius gloriam exereendi & exequendi concedat. Dat. apud Manerium nostrum de Reding, 25. Septemb. Anno Regni

Regni nostri duodecimo & Anno Christi 1570. In
cujus rei Testimonium has literas nostras manu
nostra signatas magno sigillo nostro Angliæ muni-
ri fecimus, die & Anno supradicto.

I shall now according to the Order of time give an
Historical Account of an extraordinary Case, that
happened in St. *Mary Magdalen* College of *Oxford*
occasioned by the positiveness or Ambiguity of the
Statutes of the said College, which I the rather in-
sert, because First I have found no mention of it in
Mr. *Woods* Collection of the Antiquities of *Oxford*,
and Secondly, it will give an Inspection into the
Statutable Constitution of that College; The Case
was this.

§. 3.

Mr. *Judson* one of the Deans being Dead, the
President Dr. *Humfrey* called a Meeting of the Thir-
teen Senior Fellows in order to proceed to an Electi-
on of a new Dean; Those being met Mr. *Thomas*
Cole, Mr. *William Powel*, Mr. *Henry West*, Mr. *Ni-*
cholas Lumbard, Mr. *Walter Enderby* and Mr. *Ralph*
Smith, denied to take the usual Oath prævious to the
Election, for which they Alledged that Mr. *Gregory*,
Mr. *Brichenden*, Mr. *Inchforbis*, Mr. *Wade* and Mr.
Lilly, were not Statutable Fellows, as having neither
taken Holy Orders nor taken Degrees in Law or
Physic, as they were obliged in a certain time to do
by the Founders Statutes; so that they being *non*
Socii could not be Electors; so that the foresaid Six
denied to proceed, unless Four at least of the Five be-
fore Named, either would prove their Right to their
Fellowships presently by the Statutes, or speedily by
Interpretation of the Bishop of *Winchester* their Vi-
sitor, and the Six said, they did not deny to proceed

In the Paper
Office Bundel.
Dr. *Humfrys*
Contentts.
Anno 1175.
Anno 17 Eliz.

The State of
the Controver-
sie betwixt the
President and
some of the Fel-
lows in St.
Mary Magdalen
College in *Ox-*
ford.

to Election, which was not necessary to be made at that time, but by their Statutes might be Postponed till the end of their Audit, if the Lawful Electors were present.

The President Dr. *Humfry* finding the Six Insisted upon the Plea, the third day he Summoned them; having caused the Statute to be Read to them of Expulsion, if they denyed to proceed to Election, pronounced them Expelled, and so went his way out of the Hall without Naming or Electing any Dean.

This was about *July Anno 1575*. There are several Papers which give an account of the Reasons why the Six Insisted on the Plea, Two of which, as containing the matter most fully I shall annex, together with the Transcript of the Statutes Alleged, because the matter seems to me something curious, and gives some light into the Constitution of the College.

The following Paper is a justification of the Expelled Fellows, which I could not so fully express as in their own words.

The First P A P E R.

§. 4.
The account
given in one of
the Papers of
the matter of
Fact.

The President
in danger of
perjury by the
Statute.

§ Hoc tamen
proviso, &c.
sub finem.

THis is the Order of proceeding against us, which we prove to be most unjust, and the Form of Election to be none by these Reasons.

First, The President is as much bound to Swear by our Statutes as we, because he is an Elector, therefore he is in as much danger as we, and his proceeding against us is most unjust, except he Expel himself: this is proved in every part by the Statute *de Electione Presidentis*.

Secondly,

Secondly, Where the time of Election by Statute appointed is not observed, but another time taken not mentioned by Statute: There the Election is not of necessity, nor the Transgression punishable by Statute. But this Election is not at the appointed time by Statute. Therefore this Election is not of necessity, nor the Transgression punishable by Statute.

The Minor is proved, *Statuto de finali computo Ministrorum*, because that Election is appointed at no other time, but only at the Audits end.

Thirdly, Where the Essential and material parts of an Election are wanting, there is no Lawful Election nor Lawful punishment for Transgression thereof. But this Election wanted the Lawful Thirteen Electors as Essential parts, because *non Socii* are no Electors. Therefore this Election is neither Lawful, nor the Transgression thereof Lawfully punishable.

The Minor is proved before in Mr. Gregories, Brickendons, &c. Cases.

Fourthly, Dr. Coveney being President Pronounced Expulsion against Nine Fellows, Namely, Perry, Wilson, Flower, Kingsmill, Purfoy, Mancel, Garbrand, Smith and Halloway, for refusing an Extraordinary Election, but notwithstanding they were restored by Sir John Mason and the Bishop of Ely, and Dr. Wright, affirming their Expulsion to be unjust; and their refusal to stand rather with Statute than the Presidents proceedings, therefore we trust our Cause being like, the like effect by Justice will ensue.

These were Visitors, and of this case I may probably write something when I Answer the Objections.

And the rather, for that Mr. President at the place and time of his Sentence of Expulsion against us,

Statuto 26
Unom. providi-
tur contra
Socios, &c. §.
Assistentibus,
&c.

Conclusio Statu-
torum sub.
finem. §. volu-
mus praterea,
&c.

us, neither required nor used the assent of any the Officers of the College, which are requisite by these express words of our Statutes, *Assistentibus sibi Vice-Præsidente, duobus Decanis & Bursariis*. Neither yet about a Sennight after the end of this Unjust Action against us, attempting to get the Consents of the said Officers, could he obtain the Dean of Divinities Assent to our Expulsion, which is most necessary in every punishment of a Divine such as we are, and especially at this time, when as there are but two Deans only, and both their Voices in an Expulsion necessarily required as is before said.

As they have proceeded in this matter according to their Oath, for the Maintenance of Statute, so will we, as bound in Conscience before God by reason of the Oath we have taken, stand in the same, and make claim against them, never minding to joyn in an Act with them, Incident and proper to the person of a Fellow, but upon necessity, until the said persons whose places we make claim against be clean removed, or an Order set down by the Bishop, and In-registered for the Confirmation of their places to the clean cutting off of all Controversie hereof arising; and therefore we protest hereby, that this is not so much the proper Case of these our Six Fellows, but generally ours, taking our selves as much prejudiced as these, being perswaded we may in no wise suffer it without willful Perjury to us, and therefore purpose for ever, until it be fully ended according to our Oath to resist their unjust detension, *vis & modis quibus Sciverimus quoad posse*; In Witness whereof, we Fellows have in the fear of God, all partiality set a part, Subscribed with our own hands hereunto.

This

This is Subscribed by the Six Fellows Expelled, and some others of the same Society, who joyned with them.

I shall now Insert the Second Paper, which contains the Vindication of the proceedings of Dr. Humphrey, and the Fellows Answer to it.

The Second P A P E R.

A Declaration made to the Right Honorable Mr. Francis Wallingham the first of July 1575. by Mr. Wade, Gregory, and Sir Cotton, sent by Dr. Humphrey President of Magdalen College in Oxford, upon the Case of Mr. Cole and Five other Preachers Expelled by the said Dr. Humphrey, for not yielding to an Election of a Dean, and Apostilled by the said Mr. Cole and the other, at the Commandment of the Right Honorable Mr. Francis Wallingham the 4th. of July 1575. at Easton.

§. 5.

Dr. Humphreys Defence.

The Fellows Answer.

IT happened, that God by Death took away Mr. Judon one of our Deans, whereupon it was
1. Decreed and thought
2. necessary by Statute, Mr. Powel, Mr. Cole, Mr. Lambard and the rest, that another should be chosen in his Room. Mr. Doctor Humphrey, the next Day called together 3. such as

1. **F**irst, it was not Decreed, but only consulted on.

2. Secondly, it was thought of some expedient as * necessary for Discipline, but not by necessity of Statute.

3. All that had to do were not called, and those that had not to do were called and admitted to choose.
4. We

Note in this the Numeral Figures in the Fellows Answer, refer to the like in Dr. Humphreys Defence.

* It seems that for Discipline sake their Statutes might be dispensed with in their Opinion.

had any thing to do in the Election, what time Mr. Póvel, Cole, Lumbard,

4. *denyed* to proceed in the Election, to 5. *give* any voices, which was flat against our Statutes, and 6. *deserved* incontinently the Sentence of Ex-pulsion. Yet Mr. Dr. Humfrey hath, not to deal extreemly, stayed, and declared unto them the danger they incurred, exhorted them to consider the pain of their 7. *contumacy*, deferred the Election until another season, at what time, 8. *because* they would not be found, they went a Mile out of the Town to Bowles.

• The next Day they were again sent for, where Mr. President yet again Counsell'd them to beware, who persisting in their former mind and purpose 9. *causing* others to intermedle themselves in that which pertained not unto them, by rushing very troublesomely into the Common Hall

4. We denyed not simply but upon divers and just causes, especially because the Form of Statute was not observed, that is, the 13 Senior Fellows called.

5. It is not against Statute but necessary by Statute, *contradicere, resistere, expresse impedire visis & modis quibus sciverimus*, every Act that is contrary or derogating from Statute.

6. We deserved no punishment for that which we did by Statute.

7. Yet it is not contumacy to stay where Statute commandeth us to stay.

8. We stayed at home that day till two of the Clock at Afternoon, not being called; and then went with other Ancients and Godly Preachers to excercise our selves.

9. We neither caused them to come nor knew of their comeing, nor spake to them when they were come.

10. Our

of purpose to interrupt the Election, did 10. *force* Mr. President to pronounce the Statute against them, which is, that whosoever being called to the Election of any Officer, having to do in the same, shall 11. *deny* to give his voice, must be removed from his Fellowship forthwith.

*The Defence of Mr. Powell,
Mr. Cole, and Mr.
Lumbard.*

They were perswaded that they ought to give no Voices, 12. *until* certain of the Fellows were removed out of the College whom they did not Account of their Company.

*The Answer of their
Defence.*

ALL places that the Challenged were allowed by 13. *Statute*, consent of Mr. President and Confirmation of the

10. Our Fact forced him not to do that which by Statute and Conscience should have been left undone.

11. We denyed not to give our Voices, neither was it urged, but used silence against Extremity of power.

12. Until certain not Fellows were removed out of the Number of the Electors, or the Bishop of *Winton* had been consulted, which should be within 15 Days as our Statute requires.

13. Neither by Statute nor consent of the President, nor Confirmation of the Bishop, nor all commenced as denotes.

H h

14. We

Bishop of *Winton*, or else were commenced as doubts, and referred to the Arbitrament and determination of the Bishop; whose 14. *Interpretation* they would neither stand unto as given, or 15. *stay* for as by occasion of his 16. *business* deferred: but against all Law and Reason would have certain removed before the 17. *Sentence* were given of them from their Judge the Bishop of *Winton*.

All the 18. *doubts* and Reasons that they could allege for their restoring were answered and 18. *refuted* by the Bishop himself, who in the end gave a 19. *definitive* Sentence against them, and allowed the places by them called in question at that time as good and sufficient.

14. We could not stand to that which the Bishop had not given. A dilation is no Interpretation.

15. Our desire was to stay a not necessary Election, to the end we might receive the Bishops resolution, which we had long desired & looked for.

16. The Bishop deferred not his determination for his business, but, as he confessed at Mr. Presidents request.

17. Our Statute saith, *habeantur non Socii ipso facto*: by the which we must be Ruled, and maketh no mention of any Sentence to be pronounced of the Bishop or any other.

18. They were not answered, resolved or refuted.

19. The Bishop gave no Sentence, either against us, or for them, but left all in suspense, & desired Mr. President to restore us.

Tho. Cole.
Willi. Powel.

Henricus West.
Nicho. Lombard.

Walter Enderbie.
Raphe Smythe.

This

This Postillation which we have seen and Read, being faithfully done according to the Truth of the proceeding of things here, and the sincere Grammar meaning of our Statutes, we the beneath Written approve and allow of both in Conscience before God, and humble Duty to Man, as Witnesses of the same, who were here present at the dealing, and in no wise consenting or likeing of the Presidents proceeding against them therein, being fully perswaded in Conscience he doth them, and the rest of the same cause wrong, and did in that his determination as much against Statute as might be. Which he sufficiently declared in sending such to follow the matter whose places are in Controversie, & are part of the very Subject of all this trouble, joyning with them a Bachellor of Art, the Youngest of all the Fellows, a thing not usual at any time, the Gravest and Eldest, and best suspect of all our Company thought always scarce sufficient enough to deal in the weighty Affairs of our College.

*Richard Stanclyff.
Laurence Bridger.
Samuel Fisher.
Samuel Allen.
Johannes Cravers.
William Garbrand.
Theodore Tanzey.*

*Johannes Barbonus.
Isaac Upton.
Thomas Rantings.
Johannes Hornebeius.
Stephanus Staple.
Samuel Crapmerus.
Edonards Gelibrandus.*

I shall now Insert the Statutes which were alledged in the Defence of the Expelled Fellows, and give some Inferences from them in the Conclusion.

§. 6.

The Statutes produced in Defence of the Expelled Fellows.

The Third P A P E R.

Juramentum nostrum.

I.
The Oath to
observe the
Statutes.

IT. Omnia Statuta & singula in 24. Sectione contenta quatenus personam nostram concernunt vel concernere poterunt, secundum planum literalem & Grammaticalem sensum & intellectum Inviolabiliter tenebo & observabo, & quantum in me fuerit teneri faciam ab aliis & etiam observari.

II.
To admit, &c.
no Statutes contrary to those
made by any
but by *William Waynfleet*.

It. Nulla Statuta, Ordinationes, interpretationes, immutationes, injunctiones vel glossas, qualitercunque vero sensui & intellectui eorum etiam repugnantibus derogantes contrarias, per quemcunque vel quoscunque, quam per *William Waynfleet* edita & edenda quomodolibet acceptabo, aut Consentiam aut aliquammodo admittam vel iisdem parebo ullo tempore, sed eis contradicam & resistam expresse, ipsaque fieri, viis & modis omnibus quibus scivero, impediam juxta posse.

Eadem habentur in juramento Scholarium probationum.

Eadem habentur de Juramento Scholarium 15 annum excedentium.

Anathema Domini Fundatoris.

III.
Anathema against the violators of the Statutes.

It. Ordinamus & Statuimus sub pœna Anathematis & Indignationis Omnipotentis Dei, nequis Scholarium aut sociorum dicti Collegii, cujuscunque gradus, conditionis, Status, Scientiæ, Facultatis extiterit, pro sua voluntate aut odio aut occasione quacunque Ordinationum.

Ordinationum & Statutorum nostrorum, quidquam de sensu nostræ Intentionis aliqua Interpretatione, excitante sinistra ac quocunque suadente colore, arte vel ingenio, occasione data vel procurata affirmet. construat aut defendat, aut quovis alio modo per se vel alium quemcunque aliter quam quod nostræ Intentionis existit, construi, interpretari seu etiam affirmari quacunque ex causa procuret. Siquis vero, antiquo suadente serpente, quicquam contra præmissa verbo vel facto presumpserit attemptare a nostro Collegio si per testes idoneos convictus fuerit, tanquam in hac parte perjurus penitus excludatur.

It. Sequitur (præter verba in juramenti proposita) nullo in ullo tempore liceat Præsidenti aut Sociis Collegialiter conjunctim vel divisim nec alteri *cujuscunque dignitatis*, existat nova Statuta, &c. (supra in juramenti posita) condere Ordinare, Statuere, dictare nec præmissa Statuta vel eorum aliqua, quocunque quæsito colore, infringere vel alicujus Statuti tenorem aut substantiam demere nec circa ea quomodo libet dispensare.

It. Si talia fuerint per aliquem Episcopum Successorem, vel alios quoscunque, ipsa nolumus ligare Socios vel alias personas nostri Collegii *quovismodo* sed ab observantia eorundem omnes nostri Collegii Authoritate nostra vobis commissa eximimus. Interpretationes tum declarationes circa dubia permittimus Domino Episcopo *Winton*; cui in his obtemperare debent omnes & singuli sub ipsorum debito juramento, dummodo interpretatio fiat de iisdem juxta planum sensum eorum intellectum & expositionem Grammaticalem & literalem magis & aptius ad prætentum dubium applaudentem.

IV.
Neither President or Fellows or any other of what Dignity soever, to make new Statutes.

V.
Here note, that he had the Authority by which he made these Statutes from the King.

It. Inhi-

VI.
Neither President or Fellows to make any Orders, Declarations, Interpretations, &c. contrary to the present Orders, Statutes, &c.

It. Inhibemus specialiter & expresse & sub interminatione Divini iudicii interdiciamus Collegii nostri Præsidenti & Scholaribus Universis & singulis, ac in virtute Juramenti per ipsos & eorum quemlibet in ipsorum admissione ad Collegium nostrum prestiti, admonemus & hortamur in Domino ne ipsi Collegialiter conjunctim vel divisim alias Ordinationes, declarationes, Interpretationes, immunitiones, injunctiones, expositiones vel glossas præsentibus Ordinationibus, & Statutis vel ipsorum, plano, sano Grammaticali ex literali intellectui, quomodolibet adversantes repugnantes, derogantes acceptent, nec hujusmodi fieri procurent, aut iisem utantur, publice, vel occultè, directè vel indirectè.

VII.
None to admit dispensations contrary to these Statutes.

It. Si autem præmissa vel contra intentionem nostram in præmissis vel eorum aliquo per aliquem vel aliquos (quod absit) aliquid vel aliquam Statui Ordinari, fieri aut dictari vel dispensationem aliquam scienter vel ignoranter concedi vel haberi contigerit in futurum, Authoritate præsentis Statuti decernimus pronunciamus & declaramus dictos, Præsidentem, Vice-Præsidentem, Socios, & Scholares dicti nostri Collegii (quibus omnibus & singulis, in ea parte omnem & omni modam adimimus potestatem) ad ipsa observanda non teneri quomodolibet vel astringi, sed ea vacuumus omnino & carere volumus omni robore firmitatis.

De tempore assumendi Sacras Ordines.

I.
The Statutes that prove those that were objected against to be no Fellows, and particularly against Inkerber and Gregory.

Volumus quod Socius quilibet dicti Collegii Mr. Artium infra unum annum post necessariam regentiam suam completam continue numerandam, nisi ad studium juris civilis vel Medicinarum se transferat ad sacerdotium, impedimento cessante legitimo, per Præsidentem,

sidentem, Decanos & Bursarios approbandos se faciat promoveri.

Hinc sequitur *Wadum*, *Inckforbeum*, minorem *Gregorium* Socios non esse.

Provisio quod de dicto numero Quadragesimo ex speciali providentia Præsidentis, Vice-Præsidentis, Decanorum & trium aliorum Seniorum duo vel tres in jure Canonico, & Civili: Alii duo vel tres in Medicinis, quos ad hoc ipsi aptos habiles & idoneos decreverint, studere poterint.

Juramentum Sociorum contra Wadum.

Non Impetrabo dispensationem aliquam contra juramenta nostra prædicta nec aliquam particulam eorumdem, nec contra Ordinationes & Statuta aut ipsorum aliqua nec Dispensationem hujusmodi per alium vel alios publicè vel occultè impetrari vel fieri procurabo directè vel indirectè. Et si fortè Dispensationem hujusmodi impetrari aut gratis Concedi vel acquiri contigerit cujuscunque fuerit Authoritatis seu si generaliter vel specialiter aut alias sub quacunque forma verborum concessa sit: ipsa non utar nec eidem consentiam quovismodo sicut Deus me adjuvet & Sacro Sancta Dei Evangelia, Hinc concluditur *Wadum* perjurio teneri & per consequens non Socium, &c.

II.
The Statute
against Mr.
Wade.

De Sociis & Scholaribus, Beneficiis, &c. contra Brickentonum.

Si aliquis Sociorum vel Scholarium prædictorum, Beneficium Ecclesiasticum cum Cura vel sine Curâ, cujus fructus redditus & provencus 80. Librarum valorem annum, si in eodem personaliter resideat, excedunt, adeptus fuerit per unum annum, & non ultra, in dicto Collegio Socium vel Scholarem stare per-

III.
The Statute
against *Brickenton*.

permittimus; volentes, ac etiam decernentes quod post lapsum hujusmodi anni nisi infra annum eundem, ipsum Beneficium, effectualiter dimiserit vel nisi cessantibus, dolo, fraude ac malo Ingenio litigiosum sit; ipso facto pro non Scholari & non Socio penitus habeatur.

De tempore assumendi gradus in qualibet facultate.

The Statute against Gregory.

Artium Magistri omnes & singuli, necessaria sua regentia completa, exceptis his qui ad Jura, Leges, vel ad Artes Medicinales Licentiati sunt se transferre: Statim ad facultatem Sacre Theologiæ, se divertant. — *Contra Gregorium.*

The Bishop of Winchester to be consulted upon any doubts arising betwixt the President, Fellows, or Scholars, but he is not permitted to make any Interpretation contrary to the plain sense.

Si lis de & super aliquo Article nostrorum Statutorum & Ordinationum inter Præsidentem aut Socios aut Scholares aut aliquas alias personas nostri Collegii supradicti, dubium aliquod, seu discors Opinio oriatur, cujus decisio planus & sanus Intellectus intra quindenam, a tempore emergentis dubii computandam, nequiverit haberi, tunc volumus quod Præsidentis nostri Collegii quam citius poterit Dominum Episcopum *Winton* pro tempore existentem (in quo sinceram fiduciam ponimus) consulat.

Nolentes insuper aliquam Interpretationem fieri de eisdem aut circa ea nisi juxta planum sensum Communem intellectum & expositionem Grammaticalem & literalem magis & aptius ad causam seu pretensum dubium de quo queritur & Agitur applaudentem.

§. 7.

I shall now abstract some parts of Secretary *Walsinghams* Letter, and the Bishop of *Winchesters* reply about this matter.

The

The Secretary Writes thus *inter alia* — ‘If I can
 ‘Judge of any thing, methinks these, [the Expulſed
 ‘Fellows] have more reſemblance of Truth on their
 ‘ſide than the other hath. They have ſet it down ſo
 ‘plainly, and in ſo good order, that if Truth be not
 ‘there, I muſt needs Confeſs my ſelf as much deceived
 ‘in this matter as ever was Man in any — your
 ‘Lordſhip knows the Statutes, and I doubt not, but
 ‘you will ſee by this their Answer and Depoſition,
 ‘that the Statutes are more for them than the other—
 ‘because the Election draweth nigh and ſome ſtir
 ‘perhaps may be about them; I pray you take ſuch
 ‘Order, that either they may be fully ſettled,
 ‘or elſe the other Five whole places are not reſolved
 ‘of, may be Suspended from all Voice, as well as
 ‘theſe. — Then Concludes — Therefore I pray you
 ‘my Lord take ſuch Order in the matter as Reason
 ‘and Conſcience would, and relieve the oppreſſed
 ‘againſt the wrong; aſſuring your Lordſhip, that if
 ‘they cannot obtain it at your Hands they ſhall be
 ‘heard, and I truſt obtain it elſewhere. Dated at
 ‘Killingworth July the 11th. 1575.

The Biſhop of Wincheſter Answers July the 16th.
 following, thus — ‘I have received your Honors
 ‘Letter, &c. to the which I may now Answer but
 ‘in brief. I will willingly do what lyeth in me to
 ‘quench the Fiery Coales kindled in the Society of
 ‘Magdalen College, the Smoak whereof I perceive
 ‘doth trouble your Honor and others. But I hope
 ‘within a ſhort time to cool the heat, ſo as the Smoak
 ‘ſhall vaniſh away, &c.

The ſame Biſhop Writes another Letter to the
 President, Informing him of the Receipt of the Secre-
 taries Letter, and adds — ‘I continue in my former

Here Obedience is payed to the Secretaries Letter of advice.

'Opinion towards them, to wit, that I would be
'loth that they should be Expelled, if by any means
'the Statutes may relieve them; and therefore I re-
'quire you Mr. President and the Fellows, that you
'choose none now at the next Election into their
'Rooms, but that their places may stand in the same
'Terms as they are, till I may hear what by you and
'them may further be spoken and considered by the
'Statutes, to the end the Statutes may be truly ob-
'served, and in the mean season no Men be of that
'Calling wronged — I have willed them to absent
'themselves from the next Election, for good consi-
'deration, and my hopes is, that none of that Society
'will move any troubles in or about the Election,
'for any matter now hanging in doubt and not decid-
'ed, for that will breed slander to the Calling, and
'danger to themselves; so he orders the President
'and others to attend him the First of *August* about
'the Controversie. Dated at *Losely* the same day
'and Year with the former.

I have not found among these Papers what was
the Issue of this great Controversie, but from what
doth appear, make these following remarks.

§. 8.

The first obser-
vable from
these short Sta-
tures.

Upon the whole matter we may observe, First,
That these strict and Indispensable Statutes in former
times as well as now, and in all times to come, have
and will Create great troubles in this College, unless
there be in the Sovereign a Visitatorial as well as
Dispensing Power to Terminate endless Quarrels,
when, as in this Case, both Parties shall insist upon
Grammatical and Literal sense of the Statutes, and
tho' the Bishop of *Winchester* hath a power of Inter-
pretation, yet he is so tyed up to the Literal and
Grammatical sense, that he must unavoidably be
put

put some times to great streights to determin matters.

Secondly, However Rigidly the Statutes seem to be worded, yet none can Judge, that the Kings Dispensing Power can be restrained, since neither the Founder could so bind either his Sovereign or the Pope, nor could any of those bind their Successors by any Charter or Grant from such inherent Prerogatives annexed to their very Offices; as I shall make clear when I come to consider the Arguments used concerning the force of these Statutes.

Therefore Thirdly, I rather Judge, that the Founder (as Entaylers of Estates upon their Posterity to preserve *nodosam Aeternitatem* often do) had a great desire that his Statutes should be perpetually observed, but he could not be supposed to have such an overweening Opinion of his own prudence, but that some Cases might happen whereby the Kings of England might Judge it convenient to alter them; so that I Reasonably think the utmost of his design and hopes might be, that the Society it self should not have the power of altering them; but to Exclude the Sovereign, by their Prerogative or Acts of Parliament to Suspend, alter, or Abrogate them, was as much beyond his power to enjoin, as it was vanity in him to presume would thereby be effected.

Fourthly, In the Secretaries Letter we may observe, that he threatens the Queens Authority, if the Bishop of Winchester, their Visitor, would not do the Fellows Justice, and in the Bishops Letter to the President he Suspend all those on both parties, from giving their Voices in the next Election, which must be a force upon the Statutes for Election, if the Bishop

could not Interpret their Statutes but in the Literal and Grammatical sense ; for it is very probable it might be known by a Literal and Grammatical sense whether they were Fellows or not, and if they were Fellows the President was as much bound by Oath to Admit their Voices as they obliged to give them, and if the persons excepted against were no Fellows, then the Five were unlawfully Expelled, and so ought to have had Voices, so that whether way soever the matter were determined, I cannot conceive the Statutes or Interpretation was Literally and Grammatically observed, which is the great plea of the *Magdalen* Fellows.

§. 9.
The Case of
Mr. Wilson.

I shall now shew that in the Controversie about the matter of the Head of a single College, the Queen appointed Commissioners in a summary way to determine it *Anno 1577. 19 Regni.* The Case was this.

In the Paper
Office Bundel.
Anno 1577.
19 Eliz.

A Controversie arising betwixt *William Wilson* Bachellor of Divinity, and *Thomas* Bishop of *Lincoln*, for that the Bishop refused to Admit him as chosen Rector of *Lincoln* College in *Oxford*, the said *Wilson* Appealed to *Edmund Grindal* Arch-Bishop of *Canterbury*, whose Official Dr. *Bartholomew Clerk* Admonished and Commanded the Bishop to Admit him, and that the Bishops Commissioners should not under the pain of contempt do any thing to the prejudice of the said *Wilson*, and the Arch-Bishop committed the determining the matter to certain Commissioners. And *Thomas Underhil* Proctor of the University protested against the Commissioners of the Arch Bishop as not competent Judges, and that the Examination of the matter belonged to the Chancellor of the University. Upon all which,

The

The Queen takes the Cause out of all their hands, and Grants a Commission to the Bishop of *London* and *Rochester*, Sir *Christopher Wray* Knight, Chief Baron of the Exchequer, Sir *William Cordel* Knight, Master of the Rolls, *Thomas Wilson*, *John Gibson* and *John Griffith* Doctors of Law, upon the Petition of *Robert Earl of Leicester* Chancellor, the Doctors, Masters and Scholars of the University; of her certain knowledge and sole motion, and of the plenitude of her power, Commanding them Eight, Seven, Six, Four, Three or Two of them, calling the Reverend Bishop of *Lincoln* and *William Wilson* in person, and all others by Law to be called, in General, Summarily, and in plain Form without noise and Form of Tryals, only seeing to the truth of the thing and the Fact, and attending solely the æquity by all Manners and Forms by which they can better and more efficaciously proceed in and upon the Truth of the Premises according to the Privileges and Exemptions of the said University, and in the Cause or Causes aforesaid, with their Incidents Emerging, Depending, Annexed or Connexed whatsoever, and to determine it with a due end, removing all Appeals and Complaints, Nullity and Petition whatsoever, and notwithstanding any Statutes, Canons and Customs, on the contrary published or the Law Suit depending, causing all that in the premises they shall Ordain to be firmly observed by Lawful remedies of the Law. Dated the 23^d. of *April*, the 19th. of her Reign 1557.

*Summarie in
plano sine stre-
pitu & forma
Judicii.*

By this it is apparent, that the Kings of *England* may Suspend the power of the Arch Bishop and of the Chancellor and Local Visitor, and by Commission appoint others in a Summery way, not according

cording to Form of proceedings in Courts Ecclesiastical, to determin differences in the Universities among the Society.

§. 10.
In the Paper
Office Bundel.
*Eccle. Academia
ab Anno
1580. to Anno
1589.*

In the Year 1582. 25 *Eliz.* I find a Letter Writ from Dr. *William Fulk* Vice-Chancellor of *Cambridge* to the Lord Treasurer *Cecyl*, Endorsed Dr. *Fulks* Opinion, that not only *Gonvil* and *Cajus* College, but the other Colleges of *Cambridge* should by further Authority from the Queen be Vilited and Reformed, it is Dated the 10th. of *October Anno 1582.*

I shall Insert some of the expressions, that the dis-quisitive Reader may know what was the Judgment of the Queens power then, and the necessity of the Crowns having an absolute power over the Universities, for Reforming matters agreeable to the good likeing of the Prince. His words are —
‘According to your Lordships Letter I have consulted the Heads of several Colleges, — we are of Opinion that your Honor should do a Charitable Deed to procure a Commission from her Majesty to Reform the whole State and Statutes of that House, viz. *Gonvil* and *Cajus* College, of which some are meer Papistical, newly made by Dr. *Cajus*, appointing Mafis and Dirige to be said for him, some be Ambiguous and Imperfect, as the Visitors also have Certified your Honor, &c. Furthermore so much as the Reformation of one College is not sufficient where the whole Body of the University is out of Frame; it is not mine Opinion only, but also of others of Wisdom and great Experience, of whom I may name Dr. *Harvey* for one, that it were most expedient the same were Reformed in the whole, and in divers Colleges specially by a General Commission or Visitation, in which your Honor

The necessity
by Visitation to
alter Statutes
altho’ the University
hath Authority to
make Statutes.

'or might have an Absolute and Principal Authority,
'to supply the Imperfections of all Statutes both of
'the University and of sundry Colleges wherein the
'same is needful. For so great is the multitude of
'Licentiousness and disordered persons, which can-
'not be Bridled by our present Statutes, that altho'
'the University hath Authority to make Statutes for
'the maintenance of good Order and quietness, yet
'nothing can be Decreed by the greater part, which
'will not consent to any thing, which may restrain
'their disordered Licentiousness as was notably tryed
'within these two Years, when your Honor gave
'in charge to the Heads of Colleges to see the Refor-
'mation for excess in Apparel, who devised as well
'as they could, but nothing to this day can be Decreed,
'albeit the excess doth not diminish, but dayly
'encrease, &c.

The Clause about Apparel puts me in mind of the Regulation made in *Oxford* as to that particular some Years before; which I shall here Insert, that the Curious may note how unreasonable it would be to bind the Members of the Universities to the observing of all Statutes promiscuously, if there were not a dispensing power, both in the Sovereign and Senates of the University.

Anno 1564. 6 Eliz. I find Statutes made like the Roman Sumpuary Laws, whereby the Presidents, Graduated Fellows and Scholars of the Societies, and every one that had any Office, or enjoyed Yearly Stipend or Ecclesiastic Benefice in any College or Hall, should wear no Shirt larger than to be plaited at the Collar and Wrists, the plates not exceeding half a Thumb breadth, and should have no Embroidery of Gold or Silver. That their Bands should not be turned

§. II.

Wood Antiq.
Oxon lib. 1.
fol. 286. K. K.
fol. 5. a. b. a.

turned back above a Thumb breadth broad, none should wear Stockings but of plain Cloth close to the Leg, neither Adorned with Buttons or Lace especially not with Silk, none to wear Blew, White or Yellow Doublets. To which he adds out of the same Statutes, that the University considered of the restoring, mending, and explaining the Statutes. I hope all that Swore to the observing these Statutes, would not have thought themselves Perjured if either the King or the Chancellor had dispensed with them, or if any of them be unrepealed think not themselves in Conscience bound to observe them, but that they may wear Silk Stockings, and larger Bands if not Cravats; and I doubt not but there are several obsolete Statutes, that many who Swear Implicitly to observe the Statutes in general never heard of.

It seems either the former Disputes about *Gonvil* and *Cajus* College were continued, or some new ones were arisen, as will appear by the Extract of the following Letter. If there be no mistake in the Copyer of the Date, that it should have been 1582.

Paper Office
Ecclesiastica
Academ. Anno
1590. to 1599.

Anno 1592. 34 Eliz: Dr. *Perne* Vice-Chancellor of *Cambridge* Writes thus to my Lord Treasurer *Burleigh* about the grief of the University, for his Lordships Offence at the dealing, touching *Gonvil* and *Cajus* College, and hath these expressions.

‘I send your Lordship a Copy of the Privileges of the University, &c. The weakest part therein in mine Opinion is the want of the Confirmation of the Spiritual Jurisdiction to the Chancellor of the University, for that we do now exercise, was first granted by the Bishop of *Rome*, and Confirmed by prescription.

In

In this I observe only, that the Vice-Chancellor hath recourse to the Queens Power, to have the Ecclesiastical Jurisdiction Granted to the University, owning they had the like from the Pope.

I could add many things more relating to the University or private Colleges, wherein the Kings power of Visiting by Commission is cleared, but I shall hasten to a Conclusion of this Head, and in the next place shew in one Instance how King *Charles* the First, without the formality of a Visitation, ordered such matters as he thought fit in the University of *Oxford*, by a Letter directed to the Vice-Chancellor of the said University. Dated at *Woodstock* the 26th. of *August* 1631. as followeth.

§. 12.

TRufty and Well beloved, We Greet you Well, having at full Length, and with good Deliberation heard the Cause concerning the late Disorders and Disobediences to Government in that University of *Oxford*, and being moved by the greatness of the Offence to punish some persons according to their several Demerits, and to Order somethings for the more settled and constant Government in that Our University hereafter, Our Will and Pleasure is, That you forthwith upon Receipt hereof call a Convocation for performing and Registering those our Sentences and Decrees as followeth.

Paper Office
Bundel.
Ecclesiastica
Universitatis.

The ends for
which the Uni-
versities are
subject to the
King.

The Kings
pleasure ratified
in a Convoca-
tion, as in a
Parliament of
France.

First, That Three be Banished out of the University, The Proctors to Resign their Offices in Convocation, and Two others be chosen in their Rooms.

Secondly, For the things which we think fit to settle presently in that Government they are, that as to Sermons the Vice-Chancellor to have Copies upon

K k

Oath

Oath, That as to any whom the Vice-Chancellor Commands to Prison, the Message be sent by the Beadle, and he that refuseth shall be judged a breaker of the Peace, and not to have any Appeal.

Thirdly, A Command that the Delegates who at this present are in hand with the Statutes, make haste and lay all other Statutes aside till they have drawn up two perfect and sufficient Statutes for Causes of Appeal, the one in matters of Instances, and those things which belong to the Chancellors Court, the other for all kind of Appeals in other Causes whatsoever.

*E Collectionibus
Dni. Josephi
Williamson,
olim Secretarii
Regis primarii.*

Anno 1632. 8 Car. 1. The King Granted a Commission to the Earl of *Holland* then Chancellor of *Cambridge*, the Arch-Bishop of *Tork*, and Sir *John Crook* to Visit *Pembroke Hall* in *Cambridge*.

Anno 1634. 10 King Charles the First, the King Impowered under the Great Seal the Arch-Bishop of *Canterbury*, the Bishop of *Rocheſter*, Sir *Nathaniel Brent* and others, to Visit all Colleges, Churches, Hospitals, &c. and to make Laws and Statutes, and this is expreſſed to be *ex Suprema noſtra Authoritate Regia*, by the Kings Supreme Authority.

*Wood Antig.
Oxon lib. 1. ad
Annum 1633.*

I have not found any perfect Copies of theſe Viſitations, but find in Mr. *Wood*, that the Regulating of the Univerſity Statutes of *Oxford*, which had been begun to be digeſted 1629. by Delegates appointed for that purpoſe, were brought to a good forwardneſs, *Anno 1633.* Arch-Biſhop *Laud* then Chancellor being very Intent upon it.

When the ſame Arch-Biſhop Viſited the Univerſities by his Metropolitane Right, he was oppoſed in it, and the matter came to be heard before the King and Council, of which I ſhall preſently give an account,
and

and whoever desires a more full Relation may see the whole proceedings in the Annals of Mr. *Francklane*. I shall only Insert here an extract of what I found in the Paper Office Relating to *Merton* College in *Oxford*, which endeavored to decline the Arch-Bishops Authority in that Visitation, the principal Reasons produced for it being these.

First, That King *Henry* the Third at the Foundation of the College Styles himself *Patronus* and consequently was Visitor in these Words — *Assignavit Maneria predicta in suis manibus nomine nostro velut nomine Patroni*.

Paper Office.
Academia
Miscellanea.
Reasons why
the King is Vi-
sitor of *Merton*
College.

Secondly, The Ancientest Copy of Statutes is, that which is Confirmed by the Bishop of *Lincoln*, with a Reservation of such Privileges as belonged to the Diocesan, and is Confirmed by the Arch-Bishop as Provincial, without any Reservation at all; which in reason he would not have done if he had been Visitor.

Thirdly, The Bishop of *Lincoln* sent Monition to the College, intimating a purpose to Visit. From whom the Fellows Appealed to *Rome*.

Fourthly, The Statutes of *Walser Merton* have the word *Patronus* often, which cannot in reason be applied to the Arch Bishop, to whom he had no Relation, but rather to the King whose Chaplain and Chancellor he was.

By this it appears what the Opinion of the Society was then, that the King was Supreme Visitor, and that the Bishop of *Lincoln* reserved his Diocesan Right, yet when he designed an extraordinary Visitation the Fellows Appealed to the Apostolic See as Supreme, and I have cleared that what power that See had, is now in the King, according to the Laws.

§. 13.

I now proceed to give an Account of King *Charles* the Firsts Order of Council, the 12 *Regni*, which hath been so much urged as if the King had Decreed in Council, that none but the Arch-Bishop of *Canterbury* should Visit the Universities being Scituate in his Province, but by the whole scope of the Record it appears, that the Controversie was betwixt the Arch-Bishop of *Canterbury* and the Universities of *Oxford* and *Cambridge*, concerning the Right and Title of the Metropolitcal Visitation of the same, and that the Universities did pretend they were Exempt from the same, and the matter in Dispute was referred to the King and his Royal Judgment and Sentence. who calling the Arch-Bishop of *Canterbury* Chancellor of the University of *Oxford*, and the Earl of *Holland* Chancellor of *Cambridge*, and others to come before him and his Council at *Hampton-Court*, and having heard the Arguments of both the Parties, &c. First and before all things by Legal proof, and the Confession of both Parties, It appeared that the King in Right of his Crown of *England* hath had and hath the power of Visiting the said Universities as often and whensoever it should seem fit to the King and his Successors. And that the Arch-Bishop of *Canterbury* by the Right of his Metropolitcal Church hath had and hath power of Visiting all his Province of *Canterbury*, in which the said Universities are Scituate.

Then follows that on the part of the Universities, it was proposed that by certain Charters of the King and his Prdecessors and Papal Bulls, they were Exempt and freed from all Visitation and Jurisdiction of the said Arch-Bishop, and that Immunity by use of time they now enjoyed by prescription, and on the Arch-Bishops part it was shewn, that King *Rich-*

ard

Litigae & Controversia prædictis ad nos & Judicium & Sententiam nostram d. latis.

Primo & ante omnia per probationes Legitimas & per concessionem utriusque partis nobis constabat nos jure Corona nostre Regni Anglia habuisse & habere potestatem Visitandi Universitates prædictas quoties & quandocunque nobis & Successoribus nostris Visum fuerit.

And the Second and King Henry the Fourth had Judged the cause in favor of the Arch-Bishop, as before related, therefore the King Judgeth and determineth the Right of Visitation to belong to the Arch-Bishop and his Successors and his said Metropolitan Church; and that not only once in his Life as in other Parts of his Province of *Canterbury*, but that it might be Lawful to the Arch Bishop and his Successors, after the first Metropolitan Visitation ended, to Visit the said University by himself or his Commissaries, as often as it should appear necessary to the said Arch-Bishops, on a reasonable and Lawful Cause, first by the King and his Successors to be approved. Dated the 30th. of January 12 Car. 1.

Quibus omnibus per nos consideratis habitaque deliberatione cum prefatis Conciliaris nostris, Judicavimus & determinavimus, &c.

The Arch-Bishops Visitation not allowed, but by the Kings consent.

By this Record under the Broad Seal it is apparent, first, that there was a Controversie only berwixt the Arch-Bishop and the Universities, whether the Arch-Bishop as their Metropolitan might Visit, or they were Exempted from it. Secondly, That it was yeilded on all sides, that the Kings Visitation was in no manner hereby disputed, but it is positively asserted, that the King and his Successors might Visit as often as they thought fit. Thirdly, That this Controversie was wholly determined and adjudged by the King and his Council. So that there was not the least Argument could be grounded from hence, that the power was devolved upon the long Parliament to Visit the University of *Oxford* by their Commissioners, as Mr. *Pryn* confidently but most unconclusively asserts. Fourthly, The whole matter was determined by the King and his Council, and so, that it is in the power of any of his Royal Successors to alter the same, if to them it should seem meet.

Pryn Oxford Plea Refuted.

As

As to other Visitations, there was one 1647. by Ordinances of the long Parliament, which being no ways conducing to my purpose unless it were to shew, that what power soever claimed any sort of Sovereignty as that Parliament did only a co-ordinate power, yet they would assume the power of Visiting the Universities as a Prerogative annexed and inseparable from the Sovereignty, and it being so largely Treated of by Mr. Wood I shall not Insist upon it, nor of that which followed, *Anno* 1660. upon the Restauration of King *Charles* the 2^d. which was most necessary for the Restoring of those who had been Ejected by the long Parliament, and the purging out of the University the persons who had been Active in the time of Usurpation, and were not like to comply with the Monarchy and the Church of *England* then restored.

Antiq. Oxon
lib. 1. a. fol. 369.
ad fol. 414.

§. 14.

The Form of a
Commission to
the Bishop of
London to Visit
the Chappel of
All-Saints, &c.
in Minorities
**London.*

I shall annex to these an extract of the material parts of a Commission granted to *Humfrey* Bishop of *London*, to Visit the Chappel of All-Saints, and the Individided *Trinity*, in the *Minorities* in the City of *London*. — The words are, In omnibus & singulis Criminibus & delictis Ibidem, & infra præinctum, sive Jurisdictionem dictæ Capellæ, per Visitationem Corrigibilibus, & ad punitionem & Correctionem eorundem, & personarum delinquentium, quæ & quæcunque fuerint juxta eorum demerita: Sive per amotionem, Deprivationem, Suspensionem, Excommunicationem, vel aliam Correctionem debitam prout vobis videtur congruum, & juri & æquitati consentaneum, & juxta sanam Discretionem vestram procedendo: nec non ad quæcunque Juramenta licita, & in Visitationibus præstari consueta Ministranda; & in omnibus & singulis summarie, & de plano, & sine

sine strepitu, & Figurâ Judicii, solâ rei veritate inspectâ procedendo, & generaliter omnia & singula alia facienda, exercenda, & expedienda quæ ad Officium Visitatoris in præmissis, aut circa ea necessaria fuerint, seu quomodolibet opportuna. Vobis præfato Do. Episcopo plenam & absolutam damus, & concedimus per præsentem protestatem, vicesque nostras Committimus; cum cujuslibet corecionis Legitima potestate, Dated *Junii 2d. Anno 1671.*

Here the Kings full and absolute power is declared.

From this we may observe, that the King Impowers a Bishop to Visit, even in his own Diocese, a place Exempt from ordinary Jurisdiction as this Chappel claims to be by former Grants from the Pope; so that this is a pregnant instance, that the Supreme Sovereign power is to be restrained by no Exemption, prescription or other claims.

Inferences from the Record.

To draw this matter to a Conclusion; I shall Insert the Opinion of an Eminent Lawyer concerning the Kings power over Corporations in general, and so over the Universities and private Colleges. The person is of the long Robe, and eminent in his Character, who tho' he desires not to have his Name made use of, yet hath been pleased to give me his Judgment in Writing as followeth.

The Conclusion of this Section.

'The Body Natural is Created by God: Bodies
'Politick are Created by the King, and as they are
'Created and receive their Being, Life, and
'Strength from the King; so they are Governed by
'him, and by him are corrected and punished for
'their Irregularities or mis-behaviors, either by
'seizure of their Liberties for a time: Or upon less
'occasions than commonly are imagined, for their
'Omissions or Commissions, they may be Annihilated and dissolved at his Majesties Suit in a Quo-

Warranto;

‘*Warranto* ; as lately was done in the Case of the
 ‘City of *London*, which was not only the greatest, and
 ‘perhaps the Ancientest Corporation in the King-
 ‘dom ; but was fortified also by many Acts of Par-
 ‘liament, and Ancient prescription and custom, and
 ‘yet not all sufficient to defend them against the King,
 ‘tho’ the Offences for which they were dissolved,
 ‘were not of the greatest Magnitude.

‘There is no Corporation whatsoever, Lay or
 ‘Spiritual, saith the same Judicious person, but is
 ‘lyable to a *Quo Warranto*. Therefore the King was
 ‘merciful to *Magdalen College*, that he did not pro-
 ‘ceed against them by that Method.

‘There are no Corporations, which are the Kings
 ‘Creatures, but have sinned against him to their
 ‘own destruction, if they should narrowly be looked
 ‘into ; as there are no Men but have sinned against
 ‘God : and if the King had not power, upon just pro-
 ‘vocation, to dissolve them, every Corporation
 ‘would be in the nature of an Independent Com-
 ‘mon-wealth.

‘The King is Supreme Ordinary, Visitor, Almo-
 ‘ner and Regulator of all Charities ; Therefore every
 ‘day in Chancery he doth by his Chancellor in the
 ‘Name of his Atturmy General Regulate, Correct,
 ‘and settle Charities, and when any person, of Chari-
 ‘table Intention, is mistaken in the end, or object of
 ‘his Charity, the mistake in Chancery is frequently
 ‘corrected, and that which the Donor intended one
 ‘way is there applyed or disposed another way, and
 ‘to another person, of which there are frequent In-
 ‘stances.

Not doubting but all this is according to Law ;
 how can it be thought, that the King hath not the
 same

same power over Universities and Colleges, only in other Corporations the Tryal is before the Judges of the Kings Bench, who are his Ministerial Officers; and in Universities and Colleges it is done by the Kings Mandate, or his Commissioners, which are but various methods of exerting the Kings power? and I think the Judgment of another great Lawyer, will be granted, that where Statutes are made upon branches of the Kings Prerogative, they are remedial and take not away the Kings concurrent power, as may be seen in *Colt and Glovers Case* in my Lord *Hoberts Reports*, fol. 146.

Having met with some particulars in Judge *Keebles Reports*, in Dr. *Patricks Case* after my Intention to close this Section, I could not omit the giving a short account of such material parts as may satisfy the Curious Reader, that what I have delivered on this head is according to Law.

§. 15.
The opinions
of several Judges
in this mat-
ter.

3 First, There (a) it is asserted, that the King without the Ordinary may properly Erect an University, and give them power to send Burgesses to Parliament.

(a) *Keebles Reports* 2d. part, King and Bryan against Patrick, Trin. 18 Car. 2. fol. 65. and 66.

Secondly, That the King by Patent may appoint Visitors, and the giving this power to the King is Cumulative not Privative, as appears 2 H. 7. 6. B. 5 Coke 5 B. and it leaves a concurrent Jurisdiction, as is clear in F. N. B. 21 C. and 51 B. and 80. which is sufficient to Answer the Objection of the Fellows of St. Mary Magdalen College, that the Bishop of Winton being their Local Visitor, if he were satisfied to confirm the Election, they could not be adjudged faulty, by any other Visitors, of which point I shall have occasion to Treat hereafter.

Here cap. 7. §. 3.

(a) Idem.

Patrick's

Case Hill. 18

Or 19 Car. 2.

Keebles Reports

fol. 164. 2d.

part.

But to proceed, (a) *Thirdly*, By 10 H. 7. 18. and the Bishop of *Winchesters* Case, the King may exempt any Ecclesiastical Corporation from Ordinary Visitation, and consequently hath the power in himself.

(b) Idem fol. 166.

Fourthly, If there be no (b) Visitor properly appointed by the Founder, the Chancellor and Vice-Chancellor have the Government of any College, who are the proper Officers of that distinct Common-wealth of Learning, and they are Established or fortified in that by the Kings Letters Patents.

(c) Id. fol. 168.

Fifthly, Altho' King *James* the First, (c) 3 Regni gave the Chancellor of *Cambridge* power of Visiting, *Queens* College there, yet the King remains Visitor as Heir to King *H. 6.* Husband to *Queen Margaret* that Founded it, as the Judge there Asserts; but if it had been a private Founder, the King shall not lose the Right of Visitor as Sovereign, since the Licence for the Foundation is from the King of what private Foundation soever; so if there were no Visitor appointed by the Charter of a Founder, the Chancellor is Visitor, and Superior to him is the King.

(d) Idem fo. 169.

Statutum de

Sixthly, In the same Case it is laid down (d) as Argument, that there is a Visitor Temporal as the Founder, and Ecclesiastical to examin, correct and amend things done contrary to the Rules of their Order, which were declared by the Canons of the Church, whereof the Bishops were the Natural Visitors, and it is plain that (e) no Abbot, Prior, Master, Warden, or any other Religious person of whatsoever condition State or Religion he was, being under the Kings power or Jurisdiction, should depart into any other Country for Visitation, or upon any other colour, by that means to carry the Goods of their Monasteries

(e) Asportatio

Religiosorum

35 E. 1. Anno

1307. cap. 2.

steries or Houses out of the Kingdom. It is also in the Argument laid down as the Reason why the claim was made in the time of King *Richard 2d.* and the Act 13 *H. 4.* for the Arch-Bishop of *Canterburies* Visitation of the University of *Oxford*, that it was only about matters of Faith by Reason of Heresie and *Lollardism*. But in matters of breach of Statutes, &c. the Founder or Visitor *Communi Jure* had the right; and tho' the King granted the power which the Founder had, yet he never intended to grant away his own Supreme Authority thereby, or could grant the Right of his Successors.

These matters I have noted in this Case, that the Ingenuous Reader may know, that what I have discoursed of in this Section is agreeable to the sentiments of the Reverend Judges an expression of (a) one of whom I find in these words, Both Jurisdictions, Lay and Spiritual, are derived from the King, as the Sun and Moon take light of God. I lay no stress upon any Analogy of the comparison further than that it thereby appears how fundamental a matter it is in our Laws, that all exercise of Authority, Discipline, Government, and external Oeconomy in Church and State are derived from the King, as having a Creative and annihilating power in several things that depend solely upon his good pleasure, which if any thing do in his whole Dominions it is in the disposal of matters of the Universities, as I now shall make more evident in the following Chapter.

(a) Judge Wind.
born. Patrick's
Case fol. 166.
ut supra.

C H A P. VI.

Concerning the Kings of *Englands* dispensing with the Statutes of the Universities by their Mandates.

S E C T. I.

Concerning the Kings dispensing Power in General, and in several particulars to the beginning of King Charles the Seconds Reign.

§. 1.
Concerning the Kings dispensing power in General.

HAVING given a large account of the Kings power in Visiting the Universities, and in Abrogating old and making new Statutes by his absolute and Supreme Authority: To clear the point yet more, I shall shew, by particular Instances, wherein our Kings have dispensed with the Statutes of the Universities, or particular Colleges: For there can be no greater Argument of the Right and Prerogative of any power than the un-interrupted exercise and usage of the same.

Before I descend to particulars, it may be expected that I should discourse something of the Kings dispensing power in General; but the point being determined by the Judges, and the Arguments for it being so generally known, I shall be the shorter upon this head.

¶ This power of dispensing seems to be a most necessary Prerogative, that no Sovereign, whether Ecclesiastical or Civil can want: whence we find in a

(a) *Omnibus autem a nobis dictis Imperatoris excipitur fortuna: Cui &*

(a) Constitution of *Justinian de Consulibus* a reservation

vation of that power which he thus expresseth from all these things which have been said by us, 'Let the 'Emperors State be excepted, whereunto God hath 'subjected the very Laws themselves, sending him as a 'living Law to Men, as it is Translated from the Greek

ipfas Deus Leges subiecit, Legem animatarum committens hominibus. Novel. 105. circa finem.

Agreeable to which is what *Aeneas Sylvius* (a) observes, 'that it is the part of the Emperor or Sovereign to attemper the Rigor of Law with the Bridle of Equity, to whom alone it is lawful, and a duty, 'to see to the Interpretation which lyeth Interspersed betwixt Law and Equity; since no Law can sufficiently Answer the varieties and unthought on plottings of Mans nature, and in Tract of time, Laws at first just and equitable, become unprofitable and harsh, and this moderating of Laws, saith he, is so annexed to the Prince, that by no Decree of Man 'it can be taken from him.

(a) *Conuenit Imperatori Juris Rigorem Equitatis frango Temperari cui soli Inter equitatem jusque interpretationem licet incumbit Inspicere. de Ortu & Authoribus Imperii.*

This is also agreeable to the Opinion of the most Learned Primate (b) of Ireland, whose Judgment most of our Judicious Protestant Divines have ever held in high esteem. His words are — 'positive 'Laws, as other works of Men, are imperfect, and 'not free from dis-commodities, if the strict observation of them should be pursued in every particular: 'Therefore he saith, it is fit that the Supreme Governor, should not himself only be exempted from subjection thereunto, but also be so far Lord over them, 'that when he seeth cause he may abate, or totally 'remit the Penalty Incurred by the breach of them, 'and dispense with others for not observing of them, 'at all, yea generally Suspend the Execution of them, ' &c.

(b) *Ushers power of Princes pag. 76.*

But I foresee it will be alleged that what is urged thus in General and in Theory, is to be applied to the Con-

§. 2.

Constitution of the Government of *England*, otherwise it reacheth not the point in Question concerning the Kings power of dispensing with College Statutes.

Why the Author Treats not largely on this subject.

To which I Answer first, That the Kings power in dispensing with Penal Laws in General having by Solemn Judgment in the Kings Bench been determined, and several Treatises published to clear the point of Law, and there being so lately a * Treatise Writ by a Judicious person, wherein the Kings power in that matter is Learnedly discussed, I may be excused from treating more particularly of that.

* *Jus Corona.*

§. 3.
Observations
on the 25 H. 8.
C. 21.

* 1^o & 2^o Phil. &
M. c. 8. sect. 10.
* 1 Eliz. c. 1.
sect. 8.

I shall therefore only note a few observables from the Statute of the 25 of King H. 8. Chapter the 21. Entituled in *Kebles* Edition 1684. *An Act concerning Peter-pence and Dispensations*, but Originally Entituled otherwise, as may be seen in the * Act of Repeal in Queen *Maries* time, and the * Act of restoring it in Queen *Elizabeths* time, to which I shall add the explication of another Act 8 *Eliz. Cap. 1.* and some few other remarks upon that Head.

The Statute 25
H. 8. c. 21. is
founded upon
the usage of a
dispensing power.

I must refer the
Reader to the
Act it self.

The Foundation of this Act is grounded upon an Hypothesis, that a dispensing power is needful in Government, and altho' it be the constant Opinion and Judgment of the Courts of Law, and all Lawyers, that the principal intendment of that Act was to Abolish the Popes power and Authority in *England*, in granting Licences, Dispensations, Faculties, &c. Yet from this Act many particulars may be observed; which will shew, not only the allowed usage of a dispensing power by the Popes and Prelates in matters of Ecclesiastical Cognizance by sufferance, as the Act Styles it of our Kings, but that the Original Right of such dispensations was in the King and so continues.

It

It is then First to be noted from the Act, 'that the Pope claimed by Usurpation, as it is there Styled, 'and persuaded the Subjects that he had a power to 'dispenſe with all Human Laws, yea, and Customs 'of all Realms in all Causes which he called Spiritual. But the same Act saith, 'that such claim of the Pope 'was in Derogation of the Kings Imperial Crown and 'Authority Royal, contrary to Right and Reason. 'Therefore in the close of this Section it is added — 'that because it is now in these days present seen, 'that the State, Dignity, Superiority, Reputation, 'and Authority of the said Imperial Crown of this 'Realm, by the long sufferance of the said unreasonable, and un-charitable usurpations and exactions, 'practised in the times of the Kings most Noble Progenitors is much and sore decayed, and diminished, ' &c. Therefore remedy is provided, &c.

The Pope exercised a dispensing power.

The power exercised by the sufferance of the King and in derogation of the Royal Authority.

From hence I think with submission, it must be owned, that if the Pope usurped this power, in derogation of the Authority Royal, then that power must be owned to be originally in the King, otherwise in the Construction of the Act it could be no Usurpation.

Nota.

✓ Besides, it's the general Opinion of the greatest Lawyers of England, that according to the Constitution of our Laws, all Ecclesiastical power and Authority in England is Originally in the King, & so derived from him, or if otherwise it is adjudged Usurpation, and encroachment. It being an undeniable Maxim, That no person hath power or Jurisdiction in England but the King, or what is derived from him, and this power of the King cannot be disposed away, nor abolished, but by express words in an Act of Parliament. Yea, so Sacred are the Prerogatives of the Crown, that tho'

§. 4.

The Ecclesiastical power originally in the King according to this Act.

So the Statutes of the 23 H. 6. about Sheriffs and 31 H. 6. about Justices of Assize are frequently dispensed with, *Coke 12 Rep. 14. Hoberts Reports, Colt and Glovers Case, p. 146.*

The Kings prerogative not restrained by Acts of Parliament on several Cases.

tho' in some Cases the Kings of *England* have by Act of Parliament departed with their Prerogatives, and yielded not to dispense with the contrary by a non-obstante ; yet such Acts have been judged void.

So my Lord *Hoberts* upon this very Statute saith, that he holds it clear, that tho' this Statute says, that all Dispensations, &c. shall be granted in manner, and form following, 'and *not otherwise*, yet the King 'is not thereby restrained, but his power remains 'full and perfect as before, and he may still *grant them as King ; for all Acts of Justice, and Grace, flow from him*, as 4 *Eliz. Dyer 211.* The Commission of 'Tryal of Pyracy, upon the Statute of 28 H. 8. cap. '53. is good, tho' the Chancellor do not nominate 'the Commissioners as that Statute appoints, yet it 'is a new Law ; and *Mich. 5. and 6 Eliz. Dyer 225.* 'the Queen made Sheriffs without the Judges, notwithstanding the Statute of 9 E. 2. and *Mich. 13.* 'and 14 *Eliz. Dyer 303.* The Office of Aulnage 'granted by the Queen without the Bill of the Treasurer, is good with a non-obstante against the Statute '31 H. 6. cap. 5. For these *Statutes and the like*, saith 'the Reverend Judge, *were made to put things in Ordinary Form, and to ease the Sovereign of Labor, but not to deprive him of Power.*

He further adds, that notwithstanding the exercise of the Popes Authority, yet the Crown always kept a Possession of it's Natural power of Dispensations in *Spiratualibus*, as 11 H. 4. to retain Benefices with Bishoprics, and 11 H. 7. to have double Benefices.

1 Hen. 4. cap. 6.

I might add to these the Reservation in the Statute 2 R. 2. c. 4. 'saving to the King his Regality to be 'found in the Parliament Roll in the Kings Confirmation of Liberties, which Sir *Ed. Coke 4. Instit. 51.* 'com-

‘complain of for being un-printed, as also of King
 ‘Henry the 4th. that he will by the Assent of the
 ‘Lords Spiritual and Temporal aforesaid, and at the
 ‘request of the said Commons be Counsell’d by the
 ‘Wise Men of his Council, in things touching the
 ‘Estate of him and of his Realm, *saving always his*
 ‘*liberty*, that is, his Prerogative, for that is properly
 ‘the King Liberty.

I shall not trouble the Reader with the many Authorities might be brought to prove this more particularly, the curious may find several Collected by the Author of the *Church of England’s Behavior under a Roman Catholic King*; to which may be added the Act declaring the making and Consecrating of the Arch-Bishops and Bishops of this Realm to be good, lawful, and perfect. The ground of which Statute was some Mens questioning whether the same were duly and orderly done according to Law or not. The Act lays this for a Foundation, ‘That King Henry the 8th. was justly and rightly re-cognized and ‘acknowledged to have the Supreme Power, Jurisdiction, Order, Rule, and Authority over all the ‘Estate Ecclesiastical of the Realm; and after Recites ‘how the Kings and Queens of this Realm, had full ‘power, and Authority by Letters Patents, &c. ‘from time to time to Assign, Name and Authorize ‘such person, or persons as they shall think meet, and ‘convenient to exercise, use, occupy, and execute, &c. all manner of Jurisdictions, Privileges, Pre- ‘heminences and Authorities, in any wise touching, ‘or concerning Spiritual or Ecclesiastical power, or ‘Jurisdiction within this Realm, &c.

§. 5.
 Where to find
 Arguments for
 the dispensing
 power, *pp.* 129.
 to 137. here.

Some Para-
 graphs in the
 Act 8 Eliz. c. 1.
 explained 26 H.
 8. 1.

Then follows, ‘That the Queen being lawfully In-
 ‘vested in the Imperial Crown of this Realm, &c. and
 M m ‘having

The Queens
power in mat-
ters Ecclesiasti-
cal, Supreme
and absolute.

‘having in her Majesties Order and disposition all
‘the said Jurisdictions, Powers and Authorities over
‘the State Ecclesiastical and Temporal, &c. hath by
‘her *Supreme Authority* at divers times sithence the
‘beginning of her Reign, caus’d divers and sundry
‘grave and well Learned Men to be duly Elected,
‘Made and Consecrated Arch-Bishops and Bishops,
‘&c. and after Fellows, *which is to be noted*, that in
‘her Letters Patents for the same, she hath not only
‘used such words, and Sentences, as were accus-
‘tom’d to be used by King Henry the 8th. and King Edw.
‘the 6th. in their Letters Patents made for such
‘Causes, but also hath used and put into her Letters
‘Patents *divers other general words and Sentences* ;
‘whereby her Highness, by her *Supreme Power and*
‘*Authority*, hath *dispensed with all Causes or doubts of*
‘*any Imperfection or dis-ability that can or may in any*
‘wise be objected against the same, &c. so that to all
‘those that will well consider of the effect and true in-
‘tent of the said Laws and Statutes, and the *Supreme*
‘*and absolute Authority of the Queens Highness*,
‘and which she by her Majesties said Letters Patents
‘hath used, and put in Ure, &c. it is and may be very
‘evident, and apparent that no cause of simple am-
‘biguity or doubt, can or may justly be objected.

Considerable
Inferences re-
sulting from
this Statute.

From hence it is easie to infer, that there is in the
Crown such a *Supreme and absolute power in Ecclesiasti-
cal matters*, as the King may dispense with Acts of
Parliament, even in such a concern as Consecration,
Confirmation or Investing of any person, &c. Elect-
ed to the Office or Dignity of any Arch-Bishop or
Bishop within this Realm ; for if there had been no
variation by the Queens Letters Patents from the
Form and Methods in the Acts of King * Hen. the 8th.

* 25 H. 8. c. 20.
5 & 6 E. 6.
c. 16. sect. 3.
n. 4

or *Edw.* the 6th. or that of *Queen Elizabeth* 1^o Cap. 2. there had been no need of Inserting general words or dispensations in the Queens Letters Patents. Hence may be noted, if the Queen could by her Supreme power and Authority, thus dispense with disability in Bishops, much more may the King with disabilities occasioned by College Statutes, which at pleasure he can alter and abolish.

This Note Answers all that can be alleged concerning Mr. Farmers Incapacity.

But to return to the 25th. of H. 8. The power granted to the Arch-Bishop by the Act, is in Ordinary matters such as usually the Pope or Prelates of the Realm dispensed with; and in un-wonted Cases also, which it seems by the Letter of the Act, to be of vast extent, so that my Lord *Hobert* saith, 'that 'tho' it seems to give power over all Dispensations granted from *Rome*, wonted and un-wonted, and all dispensations generally: Yet it must have construction, such as were allowable and allowed by the Laws and Practice of this Realm; for else it should make our Yoke heavier than before. Yet I cannot conceive but the power may be extended further than the ordinary power the Popes or Prelates practised; otherwise there needed not to have been such provision made, that in un-wonted Cases, the King or Council should allow them; and if the Arch-Bishop refused, the King might appoint two Prelates or other persons to grant them; and it is probable, that this Act may be construed to other purposes than a Faculty-Office only.

Observations upon this Statute by Judge *Hoberts* Reports, fol. 156.

See the Statute *stat. 17. 18.* where greater power seems to be implied, worthy consideration.

But I shall conclude this matter with the following Observations upon this Statute, which I take to be clear and undeniable.

First, That the Pope did here, by his Bulls and Breves grant Dispensations in various Cases, Erected,

§. 6. Some further observations upon the Statute 25 H. 8. c. 21.

Constituted and Visited Colleges, and Abrogated their Statutes, as I have cleared in the foregoing Chapter.

Secondly, That by this Act the Popes General or Universal power and Authority in *England* in all Cases was Totally abolished and taken away from him, as to the exercise of it.

Thirdly, That some part only of that general power and Authority, which was exercised by the Pope, was by that Act Vested, Lodged, and Delegated in and to the Arch-Bishop, as the dispensing power for Marriages, Bastardy, &c. and other matters there expressed, which was properly to be called the Popes ordinary power; and was so lodged, and delegated in the Arch-Bishop, to save the King from trouble in such ordinary and common Cases, but not to take away the Kings ordinary power & Supremacy.

Fourthly, That the Popes extraordinary power, which he exercised in *England*, is as well abolished here, by this and other Acts, as his ordinary power: But so much of the Popes Authority and power, either ordinary or extraordinary, as was at any time exercised by him here in *England*, and which is not by the said Statute Vested, and Delegated in the Arch-Bishop, is by a necessary Construction revived and re-vested in the King, and re-united to the Crown, by all those Acts which declare the Kings * Supremacy; yea tho' the Statutes had been silent therein, for that the Crown by this and other Acts, is entirely remitted and restored to all it's Ancient Jurisdictions and Prerogatives exercised by the Popes, from whence our Law Books say, it was Robbed or derived. Because such powers being taken away from the Pope, and such as had Authority under him, and neither settled in any Court or person by the Statute, can re-vest or re-sult

* See Stat. 24 H.
8. cap. 12.
25 H. 8. c. 20.
26 H. 8.
c. 1. c. 3. c. 13.
31 H. 8. cap. 9.
37 H. 8. c. 17.
1 Eliz. c. 1.
2. 4. 8 Eliz. c. 1.

re-sult to none other but the King as Supreme in all Ecclesiastical, as well as Temporal Causes, which by Sufferance or Usurpation, as the Act saith, the Pope had exercis'd.

Fifthly, By the several Acts and Instances, whereby the Kings of *England* since the making of this Act of the 25th. King *Henry* the 8th. have exerted their Supreme Authority, it is clear that the Crowns Re-assumption of what the Pope had exercis'd, hath been according to the Laws in being; of which I now proceed to give Instances in the Kings dispensing with College Statutes, of which I shall give some few, in several Cases, of many hundreds which are to be found in the Paper Office, or Secretaries Books.

The first Instance I think fit to Insert, is as followeth.

§. 7.

The Course that was held in the last Election of the Mastership of *St. Johns* College in *Cambridge*.

'*First*, The Statute of that College appointeth the Twelfth day after the Vacation to be the day of their Election, and no other.

An account of the Queens Mandate about Electing of a Master of *St. Johns* College in *Cambridge*

'*Secondly*, The greater part of the Fellows of the College were made for *Mr. Alvey*, a Senior Fellow.

Bundel Ecclesiastic, Universities Paper-Office.

'*Thirdly*, The Lord Treasurer being Informed that *Alvey* was an unfit Man, sent down an Inhibition in the Queens Name to defer the Election, which Inhibition was obeyed.

'*Fourthly*, The 12th. day being passed, and no further power left to the Fellows to Elect, The Lord Treasurer sent a Letter the second time in the Queens Name, Nominating *Dr. Clayton* and *Dr. Stainton*, Commanding the Fellows to choose one of them, and no other.

'*Fifthly*, By Authority of those Letters they choose *Dr. Clayton*.

By

By this proceeding it is manifest, that the King may not only by a Mandate of Inhibition stay the Electors from making any choice, but nominate the person to be Elected, altho' by College Statutes the day of the Election and the Electors were appointed.

§. 8.
The Bishop of
Londons Testi-
mony, that the
King hath dis-
pens'd with
College Sta-
tutes.

Before I enter upon the particular Mandates, I shall produce the Testimony of *George Montague* Bishop of *London*, in his Letter, a Copy of which the Honorable Sir *Joseph Williamson* afforded me out of the Paper-Office, directed to Sir *Edward Conway* Principal Secretary of State, as followeth.

Right Honorable,

THe Noble, and Vertuous Lady, the Lady *Denbigh* hath layed a Command upon me, to deliver my knowledge, whether the King hath at any time by his Letters, dispens'd with the Local Statutes of any College by a Non-obstante; and upon a search it appears, that his Majesty hath sent Letters of that nature to divers Colleges. If this Information may promote her desires, and give you satisfaction, I shall be right glad, and will ever remain

*London Decemb.
10th. 1623.*

*Your Honors Friend to Com-
mand, and humble Servant.*

Geo. London.

§. 9.
A Mandate dis-
pensing with
Incapacities to
receive De-
grees.

I now proceed to give some Extracts of Mandates, wherein the King dispenseth with College Statutes, in one of which Dated *December* the 11th. *Anno 1624.* the persons within named being some ways Incapacitated to take their respective Degrees, were dispens'd with as followeth.

'Trusty

‘ Trusty and Well-beloved We Greet you well. We
 ‘ are Graciously pleased of Our Royal Favor to Ga-
 ‘ briel More, Harrington Butler, George Bursey, and
 ‘ Michael Gilbert, to advance them to such Degrees
 ‘ as they are capable of, and well deserve by their
 ‘ Learning and diligent Studies, tho’ in some respects
 ‘ not qualified. Therefore Our pleasure is, that not-
 ‘ withstanding any Statute or other Ordinance to the
 ‘ contrary, you forthwith Create *Gabriel More* a Dr.
 ‘ in Divinity, and you also admit *Harrington Butler*
 ‘ and *George Bursey* to the Degree of Master of Arts,
 ‘ and *Michael Gilbert* Bachellor of Arts, in such Form
 ‘ as is usual in like Case, and these Letters shall be
 ‘ your Warrant.

In a Bundel
 Docketed, Ec-
 clestiaſtic. Uni-
 verſities, in the
 Paper-Office at
 Whitehall.

In a Mandate for one *William Morley* to be a Schol-
 lar of the College of *St. Mary of Winton College Oxon*
 without Examination, are these words — ‘ and tho’
 ‘ we have a favorable Eye to your freedom that are the
 ‘ Electors, yet in this Our so Extraordinary Recom-
 ‘ mendation, We expect your Dutiful respects to this
 ‘ Our Princely Pleasure and Command, so that this
 ‘ Our Will be not dis-appointed for any respect what-
 ‘ soever.

A Mandate for
 a Schollar of
 St. Mary Winton
 College, without exami-
 nation.

Ibid.

Directed to Our Trusty and Well-beloved Dr.
Pincock, Warden of *St. Mary Winton College* in Our
 University of *Oxford*, and Our Trusty and Well-be-
 loved Dr. *Love*, Warden of *St. Mary Winton Col-*
lege near Winchester, the under Warden, School-
 Master of the College, and two Posers of the Schollars
 for the Election.

In a Mandate Dated 30. *Regni Caroli 1.* For one
Gregory Isham, I find these words — ‘ But because
 ‘ We understand that the Country where he was
 ‘ Born layeth some formal Incapacity upon him, We
 ‘ are pleased hereby to Dispense therewith, and do
 ‘ re.

A Mandate dis-
 pensing with
 the Incapacity
 by reason of the
 Counry.

Ibid.

§. 10.
 Bundel Eccles.
 Universities,
 1630. &c.
 The acknow-
 legement from
 St. Johns Col-
 lege in Cam-
 bridge of the
 Kings power in
 dispensing with
 College Sta-
 tutes.

In the Paper
 Office, Ecclesi-
 astica Aca-
 demica without
 date.

A Senior Sophi-
 ster may take
 Bachelor of
 Arts Degree by
 dispensation.

‘ require that his Country may not be any Impedi-
 ‘ ment to him in that Election, notwithstanding any
 ‘ Statute or Order to the contrary : And these Our
 ‘ Letters shall be sufficient Warrant in that behalf.

March the 28th. 1633. In a Letter of the Master
 and Fellows of St. Johns College, to the Earl of Hol-
 land the Chancellor, about their choosing Dr. Digby
 according to his Majesties Letters, Dr. Beale being
 then Master, I find they allege, that he was not capable
 by some Statutes, having not performed some things
 the Statutes required. — They write thus — ‘ Yet
 ‘ his Sacred Majesties Request would have been tye
 ‘ enough upon his most Dutiful and Obedient Ser-
 ‘ vants, to have endeavored the accomplishment of
 ‘ his Royal desire, had we been enabled thereunto by
 ‘ Dispensation with those opposite Statutes, which o-
 ‘ therwise we stand obliged by Oath to observe :
 ‘ Which plainly shews, that if a Dispensation had
 ‘ been obtained or inserted in the Mandate, the King
 ‘ had been obeyed.

I find that the Master and Fellows of Christ College in Cam-
 bridge, being desirous to Capacitate one Norton, then but Senior
 Sophister, for a Fellowship, sent him with Letters Testimonial
 to Oxford, whereupon he obtained his Bachelors Degree, and
 so was Elected Fellow. The Relation saith, that the Arch-Bishop
 hearing of it, expressed some displeasure, and said he would
 call him to an Account for his taking the Oath for Bachelor,
 having not full time, and being not *dispensed* with. To which
 it was Answered, that the Oaths of both Universities were in
 effect the same, yet they Commenced every year, some at three
 years standing, some at 3 & a half, yet do not think themselves
 for-sworn, altho’ they have *no dispensation* ; because they sup-
 pose the granting of the Grace, do’s *Include a Tacit dispensation*.

By this it is most apparent, that not only the Kings dispen-
 sation had absolved from Perjury ; but that the University al-
 so by an Act of the Senate may dispense with a Statute, and
 tho’ it be but a dispensation Implied, it is valid.

SECTION.

S E C T. II.

Concerning Dispensations with the Statutes of the Universities, or particular Colleges, from the Year 1670. 22d. of King Charles the Second, to this present time.

I Have in this following part culled out of the Books of Mandates for Arch-Bishoprics, Bishoprics, Deaneries, Prebends, Rectories, and Masters or Fellows of Colleges, &c. some few Presidents which may shew the usuage of the later times, touching the Kings dispensing with College or University Statutes; which I might have begun at the late Kings Restauration, but that the Books of the then Secretaries of State are mostly wanting, or they are not digested into Order in the Paper Office. However thole few Instances of several kinds may serve to clear the point beyond dispute.

§. 1.

By this following Mandate will appear the reason, why the power of Dispensation with Statutes may be necessary.

The Mandate runs thus. — *William Lloyd* [of *St. A. Johns College in Cambridge*] Master of Arts, one of Our Chaplains, wanting two Years of his full standing to take the Degree of Doctor of Divinity, being shortly to return to his Charge to *Portugal*, where he may probably remain longer than the said two Years, and so be hindred from taking the said Degree at his due time, &c. We having the Approbation

a Mandate for a Dispensation for Mr. *William Lloyd*, having the Degree of Dr. of Divinity two years before the time limited by the Statutes of the University, 23. June 1670.

N n

and

and consent of *Edward* Earl of *Manchester* Chancellor of that Our University, have thought fit to signifie Our pleasure unto you in his behalf, hereby requiring that you Create and Admit him the said *William Lloid* Doctor in Divinity, at the Commencement next coming, any Statute or Custom of our said University or direction from Us to the contrary notwithstanding. Dated 23^d. of *June* 1670. Directed to Our Trusty and Well-beloved the Vice-Chancellor of Our University of *Cambridge*.

§. 2.

In the Book for the Years 1675. and 1676. Sir *Joseph Williamson*, being then one of the Principal Secretaries of State, I find among many other, these Dispensations with Statutes of Colleges.

July the 15th. 1675. *Henry More* Doctor of Divinity and Fellow of *Christ* College in *Cambridge*, hath Liberty by Dispensation to be absent from the College.

In all the Mandates the express words of Dispensation are to be noted.

December the 20th. 1675. *Richard Lake* Master of Arts of *Sidney Sussex* College, obtains a Mandate for the first Foundation Fellowship that shall be Vacant, reserving his Seniority according to his standing with this clause. — Any Statute, Custom, Order, or Letter from Us to the contrary in any wise notwithstanding, with which We are Graciously pleased to Dispense for this time in his behalf.

December the 29th. 1675. In the Mandate for *Thomas Chapman* Bachellor of Arts, to have the Degree of Master of Arts, the operative words are without any consideration of performing any previous or subsequent Exercises for the same; Any Statute, &c. as in the former.

February

February the 12th. 1675. There is a Memorable Dispensation for *Charles Otway* Son to Sir *John Otway* in consideration of the Services of the Father, sometimes Fellow of St. *John's* College. — The Expressions are, That whereas a Fellowship in St. *John's* College in *Cambridge*, was void by the Death of *Robert Clark*, which was Founded by the Lady *Rokeby*, and given to the Town of *Beverley*, and for want of a Scholar there to Our County of *Tork* at large, with a Proviso, that they enter into Priests Orders within six Months after Admission. There being none of that Town Qualified, the said Sir *John Otway* hath besought Us to Grant Our Dispensation in behalf of his Son *Charles Otway*, who being not Born within the said County of *Tork*, nor Capable to be Ordained Priest within the time prefixed by the said Statutes after Admission, by reason of his want of Age, without Our Royal Dispensation; We have thought fit, and accordingly do hereby Dispense with those particulars in his favor, so as to Capacitate the said *Charles Otway* to stand for and be Elected into the said Vacant Fellowship, notwithstanding his not being Born within the County of *Tork*, and not being of Age.

Mandate for Sir *John Otway's* Son, not capable, either as to the County or his Years.

May the 17th. 1675. I find a Mandate in these Terms, — Whereas *Josuah Ratcliff* Senior Bachelor of Arts, and Scholar of *Emanuel* College in *Cambridge*, hath by his humble Petition Informed us, that by reason of a certain Statute which provides, that there shall not be more than one person of any particular County of *England* at one time Fellow of the said College, he is render'd incapable of being Elected into a Fellowship, tho' in all other respects he is fitly Qualified for the same. We have thought

Mandate for Mr. *Josuah Ratcliff*, contrary to the Statutes of the College.

fit to condescend to his Request herein, and do accordingly by these Our Letters Patents, Dispense with the forementioned Statute, Granting you full Power and Liberty, that in case of Examination you find the said *Josuah Ratcliff* in all other respects fully Qualified for Preferment amongst you, you may choose and Admit him into any Vacant Fellowship. Directed to Our Trusty and Well-beloved Master and Fellows of *Emanuel College* in the the University of *Cambridge*.

H. COVENTRY.

I shall now add some I find in the Books in my Lord *Sunderlands* Office.

§. 2.
Dispensation
for Mr. *Edward
Finch*, not be-
ing of the
County requir-
ed by the Sta-
tutes.

The Mandate for *Edward Finch* runs thus. — Have therefore thought fit to recommend him in very Effectual manner, hereby requiring, that notwithstanding any obstruction or Impediment that may be in his way by reason of his County, you Admit him to the first Fellowship that may become Vacant in *Christ College* in *Cambridge*. Dated *May* the 21st. 1679.

Mandate for Dr.
Hawkins not to
perform Exer-
cises.

So the Chancellor of *Cambridge* is Comanded to Confer the Degree of Doctor of Divinity upon Mr. *Francis Hawkins*, Master of Arts, formerly of *Peterhouse* in *Cambridge*, by Accumulation, without obliging him to perform the Exercises requisite thereto or Cautioning or Compounding for the same, any Statute or Statutes, or Constitution of that Our University, to the contrary notwithstanding. Dated *June* the 27th. 1679.

Dispensing with
any Statutes or
Constitutions
to the contrary,
in *St. Mary
Magdalen Col-
lege* it self.

So the Mandate for Mr. *Cradock* Bachellor of Arts to have the Fellowship void by the Death of *Thomas Cradock* his Brother in *St. Mary Magdalen College* in *Oxon*, runs thus, — Any Statute, Constitution or Order

Order, to the contrary notwithstanding, with which We are pleas'd to Dispense at this time. Dated July the 19th. 1679.

An Example of a Statute of a Founder Abrogated by the King, appears in this following directed to the Chancellor of Cambridge.

§. 4.
A Statute of the Founder dispensed with concerning the Lady Margarets Preachers.*

Whereas the Lady Margaret late Countess of Richmond and Derby, in her Foundation for a Preacher in the University of Cambridge, did oblige him to Preach at Twelve or Thirteen several Towns in several Counties, and accordingly did allow him what was in those days a Competent salary, and sufficient for the discharge of the Expence of his Journey, We understanding that the salary for the said Preacher is now very small and inconsiderable. Therefore being disposed to free the said Expensive Duty, have thought fit, and accordingly do hereby Dispense with all those that shall be her Preachers for the future, for their not Preaching at the places, provided they do all other Exercises in the University, unto which by the said Foundation or Custom they are obliged; and Our pleasure is, that you alter the Oath which the said Preachers at their Entrance were to take according to these premises, and to cause these Letters of Dispensation to be Registred, &c. Dated October the 30th. 1679.

The Kings pleasure that the Oath be altered.

In another Mandate Directed to the Chancellor of Cambridge I find as followeth.

Trusty, &c. Whereas We have been given to understand, that several Disputes have heretofore risen in that Our University about Conferring Honorary Degrees without time or exercise upon Baronets and Knights, who were Members of Our said University, We have thought fit in order to the settling of that

Concerning conferring Honorary Degrees.

that matter for the time to come hereby to signifie to you, that we are Graciously pleased to allow it, &c. with a Clause that the Letters be Registred. Dated *October* the 30th. 1679.

§. 5.
Dispensation
with Statutes,
that oblige to
enter into Dea-
cons Orders,
after being two
Years Master of
Arts.

Another of the
like nature.

Therebeing a Statute in *Queens College Cambridge*, That every Fellow after being two Years Master of Arts must Enter into Deacons Orders, or else quit his Fellowship. — Mr. *Charles Palmer* is Dispensed with. Dated *November* the 18th. 1679.

In another Mandate I find, that *John Cudworth* B. A. is allowed to Travel for seven Years, whereas by the Statutes of *Christs College in Cambridge*, he is obliged to Enter into Holy Orders before that time is Expired, which he cannot do now in regard of his being under the Age required in such Cases, We do Dispense with his not Enttring into Holy Orders till after his return. Dated *December* the 31st. 1679.

Another for
Mr. *Lycote*,
now Sir *John*
Lycote.

Mr. *John Lycote* is Dispensed with, for not entering into Holy Orders for Four Years, and yet enjoy his Fellowship, any Statute, &c. notwithstanding. Dated *January* the 13th. 1679.

But upon the 20th. of *December* 1680. after reciting the foresaid Mandate it saith, the King for particular reasons revokes it.

The cause was, for that *John Lycote* now Sir *John*, Secretary to the Earl of *Castlemain*, and now Resident at *Rome*, upon his Travels having Discoverd some of *Oates* his Pranks, and brought several of *St. Omers* Youths for Witnesses, the late King was Induced to withdraw his Dispensation, whereby he might be either bound to quit his Fellowship or to enter into Orders, so that it was presumed he would either declare himself a R. Catholic or quit his Fellowship.

This

This next is an Instance of a Mandate endeavored to be eluded, which was re-inforced by a subsequent Mandate, directed to the Master and Fellows of *Trinity College in Cambridge*, *March* the 12th. 1680.

§. 6.

Trusty, &c. Whereas We were Graciously pleased by Our Letters Mandatory, bearing Date the 8th. of *November* last, to require you to Admit *John Couper* Bachellor of Arts of that our College into the first Fellowship that should become void after the Date thereof, and upon some difficulty made, Our Right Trusty, &c. Cousin, &c. *Robert* Earl of *Sunderland*, then Our Principal Secretary of State, did the 29th. of *November* following, by Our particular Direction, signifie Our pleasure in behalf of the said *John Couper*, that you should Immediately choose him a Fellow according to the Intent of Our said Letter, notwithstanding which We are Informed, that you have not yet chosen him, Whereas the Most Reverend Father in God *William* Lord Archbishop of *Canterbury* hath Certified, that he is acquainted with the State of this Case, and humbly conceives, that he doth deserve some relief from Our Favor and Goodness; We have thought fit hereby to require you to Admit him the said *John Couper* into the first Fellowship that is, or shall become void pursuant to Our said Letter, whereby We expect your ready Compliance, as having been induced to it upon particular considerations, any Statute or Statutes of that Our College, as to the time of Election, or as to the Degree of Master of Arts, which he hath taken or ought to take, or any other Statute, Custom, or Constitution to the contrary notwithstanding.

The re-inforcing of a Mandate, not presently obeyed.

There

§. 7.

There is another power in the Crown, which because it is conteined in the following Mandate, I shall Transcribe at length as I find it directed to the Vice-Chancellor of *Cambridge* to be Communicated to the Senate.

The Mandate for removing the Duke of *Monmouth* from being Chancellor of *Cambridge*, and appointing the Duke of *Albemarle* Chancellor.

The King reserves to himself the power of Interpreting Statutes of the University.

The advantages to the University by the Kings Nominating a Chancellor.

Trusty, &c. We Greet you Well. Whereas the Undutiful Behavior of Our Natural Son *James* Duke of *Monmouth*, hath given Us great Cause to Remove him from Our Service, and any further Attendance on Our Person, whereby he is rendered incapable of discharging any longer the Office of Chancellor of that University either to Our satisfaction or profit, and whereas We are given to understand, that by the Ancient Statutes thereof the Chancellor was chosen to his Office but for Three Years, and by a late Statute of Queen *Elizabeth*, but for Two Years only; and whereas We have ever reserved to Our Self the power of Interpreting the Statutes, referring to the Election of your Chancellor; We think fit to Declare the Chancellors place void, and the Senate thereof to be in full Liberty to proceed to a New Election, and that you may not want a fit Person to remind Us from time to time of all things that may tend to the Encouragement of good Litterature, and all things else that may maintain that Our University in the splendor and prosperity it hath ever enjoyed; We have thought fit hereby to require you to proceed to a New Election of a Chancellor, within the time limited by the Statutes, and whereas as well the Integrity and constant Loyalty of Our Right Trusty and Right Entirely Beloved Cousin and Counsellor *Christopher* Duke of *Albemarle*, as the remembrance of the Great and Eminent Services performed for Us by the late Duke of *Albemarle* his Father, hath justly

Entitled

Entitled him to be near Our Person and render him every way Qualified for the Discharge of so high a Trust, and whose Nomination thereunto will therefore be most agreeable unto Us, We further hereby recommend him to your Choice as a Mark of Our Indulgent care of your prosperity. Dated *April* the 4th. 1682.

¶ What is here expressed of the Kings reserving to himself the Interpretation of the Statutes, referring to the Election of a Chancellor, in altering the number of Years of their Duration, may be understood of the Prerogative the Kings of *England* have in all other Statutes of either University and of every College within them.

The Kings power to Interpret Statutes of the Univerſity.

In the following Mandate there being manifest *Indicias* of the Kings power in ordering the Qualifications of those on whom Degrees were to be Conferred, I shall Insert the material parts of it, as it is directed to the Vice-Chancellor of *Cambridge* to be Communicated to the Senate. Dated *June* the 8th. 1682.

§. 8.

Trusty, &c. Having taken notice of the several Testimonies you have lately given of the particular Honor and Affection you have for the Person of Our Right Trusty, &c. *Christopher* Duke of *Albemarle*, & being satisfied of the desire that his late Admission to the Office of Our Chancellor, may be attended with more respect than hath been usually shewn to other Persons on a like occasion; We do Graciously accept your Intimation in that part, and are willing to comply with it in what depends on Us, so as you may not want the satisfaction of doing all the Honor to his Person which you may desire, We have therefore thought fit hereby, sufficiently to Authorize and

The King grants power to the Univerſity to confer Degrees upon such as the Chancellor or Vice-Chancellor shall recommend.

This was a dispensation at the request of the University it self.

A Re-informing of a Mandate delayed.

Enable you to Confer such Degrees as the said Duke your Chancellor shall think fit on such persons as he shall recommend to you, and also to Confer the Degrees of Masters of Arts on such and so many Persons of Birth and Estate, and none others, as you Our Vice-Chancellor shall Nominate.

It seems, that some of those Persons Nominated for Degrees were delayed, which occasioned a Second Mandate the 7th. of *August* 1682. reciting the substance of the former and then proceeding thus, — We are well satisfied, that the Persons by him, viz. the Vice-Chancellor Nominated, were duely Qualified for the said Degrees according to the Tenor of Our Letter, but contrary to Our Will and Pleasure, were refused by one or two of the *Caput Senatus*. These are therefore to Authorize you Our Vice-Chancellor to Admit the persons formerly by you Nominated to the Degree of Master of Arts.

L. JENKINS.

§. 9.
The Kings Mandate for making new Statutes for Regulating of Degrees.

In the next Mandate the Kings power in making Statutes for the Regulating of Degrees, is most conspicuous.

This is Directed to the Chancellor of the University of *Cambridge* to be Communicated to the Senate there the 19th. of *March* 1682. Dated at *New-Market*.

The University prays the King to appoint Statutes to be observed.

Trusty, &c. Whereas it hath been humbly represented to us by you Our Chancellor, with the Consent and Approbation of the Heads of Colleges and the Proctors of that Our University, that the punishments already made by Statute for the due performance of Exercises required in Order to the Degree

Degree of Master of Arts in our said University have not proved so effectual as were to be desired, We have thought fit as a further Testimony of Our principal care for the Advancement of good Learning to make & Establish the following Orders to be observed by all, whom it may concern as a Statute for the future, that is to say, That every Senior or middle Bachellor of Arts, appointed to Respond or Declame in the Bachellors Schools, by the Combination to be made for that purpose, and Signed by the Vice-Chancellor and the Senior Proctor for the time being, not performing his Duty in the course allotted him then, shall be punished 20 s. and moreover be obliged under the same penalty to perform the same on the next usual day for such Exercise, and so from time to time, till he shall have actually performed it, or else be excused upon just and necessary cause to be allowed and appointed by the Vice-Chancellor and Senior Proctor for the time being, and the Master of the College, to which such person doth belong: Which Method of proceeding we will have also to take place and be duely observed as to the exercise of opposing in those Schools, saving that the punishment for the neglect thereof shall be but 10 s. to be repeated as we have above directed.

In some Mandates I find the University is Com- §. 10.
manded to Dispense as in the following.

— We have thought fit hereby to recommend
Richard Thompson Master of Arts to you in the most effectual manner, for the Degree of Doctor of Laws, Willing and Requiring you forthwith upon Receipt hereof (all Dispensations requisite being first granted) to Confer the same upon him by Accumulation, he performing the Exercises requisite thereunto, or

A Command to
the University
to grant a Dis-
pensation.

Cautioning for the same, any Statute, Order or Constitution of that Our University, to the contrary notwithstanding. Dated the 4th. of April 1684.

An Example of a Revocation of a Mandate I think fit to Insert.

The Revoking
of a Mandate.

Trusty, &c. Whereas We were Graciously pleased by Our Letters bearing date the 4th. of this Instant April, to require you to Admit Our, &c. Charles King, of Wadham College in that Our University, into the Fellowship then void, if any such then were, or otherwise into the first that should any way become void in that Our College, We have thought fit to Revoke, and do accordingly hereby Revoke Our said Letters, and all Clauses therein contained. Dated the 28th. of April 1684.

§. 11.
The Kings Order, that Mandates should not be granted without the Testimony of the Arch-Bishop of Canterbury and the Bishop of London.

Some complaints having been made, that the too frequent obtaining of Mandates for Fellowships, &c. was prejudicial to the Graduates in the Universities, whereby they were put by their Rights, and the liberty of the Elections Infringed, since by the recommendation of some Friends at Court, the King was prevailed withal to grant some, that upon due consideration and right Information probably the King would have rejected. That the King might have a fit Testimony of the Person, before he granted any such Mandate, it pleased his Majesty to make this following Order.

Having taken into Our serious consideration how much it will conduce to the Glory of God, Our own Honor, and the welfare both of Our Church and the Universities, that the most worthy and deserving Men be favored and preferred according to their Merit, and being satisfied that the Lord Arch-Bishop of Canterbury, and the Bishop of London are the most

most Competent Judges in such Cases, We have thought fit, and do hereby declare Our pleasure to be, that neither of Our Principal Secretaries of State do at any time move Us on the behalf of any person whatsoever, for any Preferment in the Church, or any Favor or Dispensation in either of Our Universities without having first Communicated both the person and the thing by him desired unto the Lord Arch-Bishop of *Canterbury* and Bishop of *London*, or one of them now and for the time being, and without having their or one of their Opinions and Attestations in the Case, and if at any time We be moved in like manner by any other person whatsoever, Our pleasure is, and We do hereby declare, that neither of Our said Principal Secretaries shall present any Warrant unto Us for Our Royal Signature in such a Case, until the said Arch-Bishop of *Canterbury* and Bishop of *London* or one of them have been acquainted therewith, and have given therein his Opinion and Attestation as aforesaid. And that this Our Declaration may stand as a lasting and inviolable Rule for the future, Our further Will and Pleasure is, that the same be Entered not only in both the sides of Our said Principal Secretary of State, but also in the Signet-Office there to remain upon Record. Given, &c. the 27th. of *February* 1682.

By this we find, that the King resolved to have perpetuated this, yet it was Revoked, as also a later Mandate, as appears by the following Mandate.

I Insert this out of the Series, because I may joyn §. 12.
the Revocation of another Order as followeth.

Whereas We did by Our Warrant under Our Signet Manual bearing Date at *Windsor* the 12th. of *August* 1681. Signifie and Declare Our pleasure to be, that neither of Our Principal Secretaries of State, should at any time move Us on the behalf of any Favor

The Re-calling of a Mandate after the former.

Favor or Dispensation in either of Our Universities without having first Communicated both the person and the thing by him desired unto the Lord Arch-Bishop of *Canterbury* for the time being, *John* Earl of *Radnor*, *George* Earl of *Hallifax*, *Lawrence* Viscount *Hyde*, the Lord Bishop of *London* for the time being, and *Edward Seymour* Esq; and without having the Opinion and Attestation of them, or any Four of them in the Case, and that if at any time we should be Moved in like manner by any other person whatsoever, Our pleasure was, and We did thereby Declare, that neither of Our Principal Secretaries of State should present any Warrant unto Us for Our Royal Signature in such a Case, until the said Lord Arch-Bishop of *Canterbury*, &c. had been acquainted therewith, and had given their Opinion and Attestation as aforesaid, and whereas We have thought fit, for special Causes Us thereto moving, to Revoke and determin Our said Warrant, We do accordingly hereby Revoke and determin the same, and all the Authority thereby Granted, and Our pleasure also is, that Our Order be Entred, not only in both the Offices of Our said Secretaries, but also in the Signet-Office. Dated the 26th. of *September* 1684.

By this Mandate it appears, that it is in the Kings power to Revoke his own Constitutions at his pleasure.

§. 13.

I might add to these the King's dispensing with Statutes of Cathedral Churches about Leases, annexing the Revenues of Prebends to a Deanry, ordering the Arch-Bishop of *Canterbury* to Grant Dispensations for a Bishop to hold Rectories in *Commendum* of which I could produce many Instances, but I keep my self to the business of the Universities.

In

In which I hope, by a sufficient enumeration of particulars, I have made it clear beyond all possibility of Dispute, that the Kings of *England* have dispensed in all the Cases before recited, with Statutes of Colleges: yet it is as manifest, that all the Members of the Universities and of particular Colleges, upon their taking of Degrees, or being Elected into Fellowships, &c. take an Oath to observe the Statutes of the University, or particular College, and yet by the power of the Kings Dispensation are no ways Involved in the Sin of Perjury.

I shall now proceed to give such Answers as I Judge requisite to those Arguments I find couched in any of the defences made by the Fellows of *St. Mary Magdalen* College, and begin with that of the obligation of their Oaths.

C H A P. VII.

The Answer to the Arguments used by the Vice-President and Fellows of St. Mary Magdalen College, in defence of their proceedings.

S E C T. I.

Answer to what is urged in their Justification from the Obligation of their Oaths to observe their Statutes.

§. 1.

THe most plausible plea the Vice-President and Fellows used in Vindication of their Electing Dr. *Hough* and disobeying the Kings Mandate, was that they were under the obligation of their Oath to observe the Statutes of their Founder in the Literal and Grammatical sense of them. And the persons Nominated by the First and Second Mandate of the King were not Qualified according to those Statutes, so that in obeying the Kings Mandates they should either be Perjured or forfeit their Rights in their Fellowships, if they Electd or Admitted any person not Statutably Qualified, and that they were under the like obligation, neither to procure, accept or make use of any dispensation from that Oath, or any part of it, by whomsoever procured, or by what Authority soever granted.

To

To which in Aggravation and Improvement was urged, the disagreeableness of being pressed to forswear themselves, at a time when his Majesty had been Graciously pleased to Grant Liberty of Conscience.

See p. 6. here, & p. 75. where the King's Declaration is urged, which I shall consider in its place.

Finding this Argument looked upon by the favourers of the Ejected Fellows as unanswerable, I think my self obliged to clear the point, not only by producing the Opinions of Casuists, but likewise by the Authority of Bishop *Sanderson*, who deserves the greater respect and credit, for that he Adorned the Divinity chair in that University long before he did the Episcopal.

In this matter we may consider what an Oath is, which is generally defined to be the Invocation of God, to be (a) witness of the plighting of our Faith, that we will do or suffer to be done, such or such a matter; by *Bonacina* thus expressed, *est Actus quo Divinum numen fidei faciendæ causa adhibemus, vel Invocatio Divini numinis in Testimonium.*

§. 2. Definition of an Oath.

(a) Mart. Bonacina Tom. 2. Disp. 4. q. 1. puncto 2. fol. 214.

(b) Possunt enim Superiores (ut Papa Princeps & alii) irritare Juramenta facta de re sibi subjecta sicut possunt, irritare vota :

qualem facultatem habet pater respectu liberorum, Superior respectu subditorum, Dominus respectu Servorum, maritus respectu Uxoris, in iis rebus in quibus tales persone sunt subjectæ & ratio est quia nullus Jurare potest in prejudicium alterius. Id. Ibid. puncto 17. propositio 4.

I need not trouble the Reader with the divisions of Oaths, or with the Schoolmens Opinions, who can Absolve persons from the obligation of them.

The forementioned Author asserts, that Superiors, (b) as the Pope, Princes or others, may Vacate the Oaths made in a matter subject to them, as well as they can Vows, which kind of faculty he saith a Father hath in respect of his Children, a Superior in respect of his Subjects, a Lord in respect of his Servants, an Husband in respect of his Wife, in those things in which such persons are subject, the reason of which is, because none can Swear in prejudice of another.

(a) Quando
Materia jura-
menti promi-
ssorii subest
alterius pote-
state sive ille
sit Ecclesiasticus

sive Laicus,
sive persona publica vel privata : hoc modo interdum irrita redduntur a Conciliis & Summis
Pontificibus Juramenta qua fiunt in Capitulis a Canonicis de Servandis Statutis & consuetudi-
nibus de acceptando vel non acceptando Beneficio & similia & qua fiunt in Universitatibus, &c.
& alia id genus — censetur enim in hujusmodi semper excepta potestas Superioris quam Inferi-
ores per suum Juramentum restringere non possunt. Lessius lib. 2. c. 42. Dub. 12. num. 61.

As to the several ways how the obligation of an Oath is taken away, the School-men (a) call it by Irritation when the matter of a Promissory Oath is subject to anothers power, whether it be an Ecclesiastic or Lay, a public or private person.

(b) Illi qui
Statuta Civita-
tis Jurarunt
observare, Ju-
ramenti Vincu-
lo non tenentur :
postquam Statu-
ta legitimi Su-
perioris Autho-
ritate fuerint
abrogata.

Bonacina Disp.
4. q. 1. punit.
17. prop. 1. n. 15.
(c) Cum quis
Juravit Statu-
ta alicujus Col-
legii sibi pra-
lecta observare
& postea conti-
gerit ea Statu-
ta revocari vel
abrogari Ju-
rans absolvetur
a vinculo Jura-
menti. Sander-
son de Jura-
mento obligato-
rio praef. 7.
Sect. 7. p. 225.

In this manner saith my Author, both by the Decrees of Councils and Popes, if the Superior forbid, those Oaths are void which are made in Chapters by the Canons of the same, for observing Statutes and Customs of receiving, or not receiving Benefices, and the like, of the observing of Statutes of Universities, and gives the Reason out of *Cajetan*, because in all such Promissory Oaths, the power of the Superior is to be excepted, whom the Inferiors cannot bind by their Oaths.

So they who have Sworn to observe (b) the Statutes of a City, are not obliged by their Oaths after the Statutes have been Abrogated by the Authority of a Lawful Superior. The like may be said of all College Statutes and Constitutions: And that the Kings Dispensation is a Temporary Abrogation, at least of any such Statutes, will be made appear below.

So Bishop *Sanderson* (c) saith, when any hath Sworn to observe the Statutes of any College Read to him; if it happen, that those Statutes are Revoked or Abrogated, he that Swears is Absolved from the obligation of that Oath.

The reason of which is : For that if the Sovereign have power to take away a College Statute, and hath Abrogated and Suspended it for a time. The Oath to observe that Statute is Null, because they Swear to observe that which is not in Being ; for *de non ente nulla sunt predicata* : And in the particular Case of St. Mary Magdalen College, they Swore to observe the Statute about Election, which the King had taken away by his Mandate.

Thus *Martinus* (a) *Bonacina* saith, the obligation of an Oath is hindred, first by a Law which destroys the Human Contract or matter of the promise upon which it is built. For the Foundation being taken away, the Superstructure is likewise destroyed, and *Layman* gives the reason, for that (b) an Oath is an Accessary to the Contract or Promise, so that as a promise hath that Tacit condition unless the promise be remitted by the person to whom it was promised, or be rescinded by the Judge, so the like condition hath the Oath which is Appendant to the promise.

The forementioned *Bonacina* speaking of the observance of Statutes of a Society, &c. subjoyns this which is opposite to our Case.

—From which we (c) may conclude saith he, that a Statute being revoked, the Swearer is no longer obliged to the keeping of it, and the reason he gives is, That the Oath obligeth to the keeping of Decrees as they are contained in the Statutes, and the Oath is so to be explained as the thing is which enforceth the obligation, and for that the Oath is to be Interpreted strictly not to be enlarged, for that otherwise one may be endangered to be perjured. The meaning of which is, that supposing a Lawful Authority (which

That the Sovereign hath Power to alter and adnul. See Cap. 6. Sect. 2. here.

§. 3.

(a) *Tom. 2d. Disp. 4. q. 1. punct. 17. prop. 1. fol. 228.*

(b) *Quia Jumentum est accessorium contractui seu promissioni : sicut ergo promissio hanc habet tacitam conditionem nisi promissio remittatur a promissario, vel rescindatur, ita etiam eandem conditionem habet Jumentum. Layman lib. 4. Tract 5. c. 8. m. 3.*

(c) *Ex quo licet inferre Jumentum revocato Statuto non amplius obligari ad illud servandum Ratio est quia Jumentum obligat ad servanda Decreta, sicut continentur in Statutis & ita explicandum est Jumentum sicut res supra quam cadit, cum quia Jumentum stricte Interpretandum est ;*

non vero dilatan-
dum propter
periculum per-
jurii. Idem.
Disp. 4. g. 1.
punct. 16. prop.
1. n. 2. fol. 226.
a.

I presume none will deny the King hath) shall Suf-
pend, or for the time revoke the Statute, the persons
that have taken an Oath to observe them are absolv-
ed from all obligation to that Oath, because an Oath
that really obliges is to be taken in the strictest sense,
because perjury is a great Sin, therefore all the Lati-
tude is to be allowed, that rationally may be before
an Oath be adjudged obligatory, lest Men be In-
volved in it. To back this he Cites many School-
men, which the Reader may have recourse to if he
pleaseth.

(a) Idem ibid.
vide Sanchez
in summa lib. 3.
cap. 11.

(b) Lege civili
impediri posse
obligationem
juramenti ne
inducatur;
quamvis enim
supremus prin-
ceps non possit
immediate &
directe irritare
vinculum Ju-

ramenti utpote Spirituale & ipsius facultatem superans, potest tamen in directe & remote qua-
tenus potest destruere contractum antequam celebretur, vel quatenus potest executionem contractus
sub culpa prohibere, Bonacina Disp. 4. g. 1. punct. 17. prop. 1. a.

§. 4.

(c) Dispensatio
tollit obliga-
tio Juramenti
& hac absolu-
tio fit Authori-
tate Superioris
solius. J. Lessius
lib. 2. cap. 42.
Dub. 12. n. 62.
fol. 631.

(d) Sicut enim
is in cuius fa-
vorem & con-
modum presti-
tum est potest
illud Relaxare
ita etiam illius
Superior cui
vel ille pleno

Thus the obligation (c) of an Oath is taken a-
way by Dispensation according to the Opinion of a
Learned School-man, and consequently the Absolu-
tion is by the Authority of the Superior alone.

Hence it is easie to understand how a Superior can
release an Oath, for (d) as he in whose favor and
for whose profit the Oath is made, can release the
Oath, so the Superior to whom he is subject *pleno*
jure can: For as the Superior, saith *Lessius*, can compel
the Inferior to remit the obligation of his Oath when
a just cause requires, is expedient, or understood.

So

So the Superior can release the Inferior, tho' the Person Swearing be not willing, or is not present to consent : therefore in such case the consent of the Superior supplants the defect of the consent of the Inferior. Thus far *Lessius*.

jure subest — sicut enim Superior potest co- gere inferiorem ut obligationem Juramenti remittat quando justa causa pos- sitat vel sub- est, ita ipse per-

se potest eam remittere illo nolente vel non comparente vel alias quando expedit, tunc consen- sus Superioris supplet defectum consensus Inferioris. Idem n. 63.

Which Bishop *Sanderson* (a) Confirms when he saith, that in such a case without the Superiors License, the Swearer is not obliged to perform what he Swaereth to, yea he is obliged not to do it, unless there intervene the Superiors License when he knows the thing, and further adds, (b) that it is most true, that the Oath of him that is under anothers power without his consent, is neither lawful nor obligatory, and it was upon this very ground that all the Loyal Divines of *England* Judged the Solemn League and Covenant was unlawful, as wanting the Kings consent, much more he having declared his dissent.

(a) Nec obliga- tur Jurans ad faciendum quod Juravit; imo obligatur ad non faciendum nisi accedit Super- ioris, ubi rem- resierit, Licen- tia, de juram. obl. praef. 4. Sect. 5. p. 104.

(b) Omnino dicendum est Juramentum ejus qui sub al- terius potestate est absque ipsius consensu nec licitum esse nec obligatorium Idem p. 105.

(c) Qui enim aliquid promit- tit alteri, tacite subintelligit hanc condi- tionem [nisi Su- perior cui Ma- teria subest contradicit nisi ipse sua Auto- ritate condonat] hinc dici solet in Juramento censeri excep- tam Superioris Autoritatem. Lessius lib. 2. c. 42. Dubit. 12. n. 63.

Besides in all Promissory Oaths there is a Tacit condition implied : as First, If the promise be not re- mitted by him to whom it is promised : or Secondly, That no public Law be made to dissolve the Statute. Thirdly, If the Superior (c) to whom the matter is subject contradict it not, or by his Authority pardoneth not the breach of it. Hence it is a Rule, that in any Oath the Authority of the Superior is to be excepted ; Therefore where the Sovereign power resides (as in the King of *England*) there the dis- pensing power resides, and the (d) secret or silent condition, viz. If the King dispense not with the observing of it, is to be Implied in every such Oath. Which leads me to the Fourth condition of a Promis- sory

(d) Promissio hanc habet jura-

*Etam conditio-
nem nisi promif-
fio remittatur a
Superiore vel
refcinditur a
Iudice. Bona-
cina. Diff. 4.
q. 1. punct. 17.
prop. 1. fol. 228.
Lefsius Dub. 2. n. 12. fol. 617.*

fory Oath, viz. the Intention (a) of the Swearer, which must constantly be understood, that he will keep his Oath if he be not prohibited by the Law or the Sovereign.

(a) *Tacita Conditio sub est vel ex Juris Dispositione vel ex Jurantis Intentione.*

§. 5. *De juram. obl.
praef. 2. lect.
19 pag. 48.*

Ⓢ Bishop Sanderson Illustrates this in 'this manner ; If a Son Swear to do any thing Lawful in it self, and the Father Command him to do another which hinders him from doing that which he had Sworn to do, the Son is not bound by his Oath, because he is bound by the Natural Divine Law to obey the Command of his Father, and he Cites in the Margent, that Rule both of the Canon and Civil Law which he approves of, *in Jramento semper jus Superioris intelligitur exceptum.*

(b) *Jurasti ser-
vare Statuta
capituli, tacita
conditio est,
scilicet qua
nunc sunt in
vigore & ma-
joris momenti,
feu quae ex vi
Juramenti sunt
in usu, non enim
se Jramento
vult astringere
ad minima ne-
que ad ea quae
non servantur
vel si servantur
non ex Religione
Juramenti, ne-
que etiam ad
Statuta futura,
nisi aliud In-
tenderit. Les-
sius, lib. 2.
c. 42. Dub. 4. n. 21. fol. 619.*

Hence Lefsius affirms, that when a promise or proposition of a thing good in it self is made, a Man is not obliged to perform it, but with Tacit Conditions of which he hath many Instances which are foreign to our business, but one is expressly to our purpose (b) when one Swears to observe the Statutes of a Chapter. It is to be understood of such as are in force (which as before I have shewed those are not which are Abrogated by the Superior) or are of greater moment, (and surely in our case the obligation of our Allegiance, and owning the Kings Supremacy, is much a greater tye upon our Consciences than those of private Statutes) or are in use by virtue of our Oath.

To Conclude this Head, *Bonacina* (a) gives the reason why in such like Oaths, Tacit Conditions are to be understood. Because an Oath follows the nature of the Act upon which it falls, for the Accessory follows the nature of the principal, as it is a known Rule in Law; Therefore if the Act have a Tacit Condition, the Oath is likewise to be Judged to have the same, and this is Confirmed because the Oath is not therefore added, that the promise, purpose or contract shall be otherways observed, than as it is wont in it self to be understood. But in that manner to be Interpreted as those things are, which cannot be revoked, [if the obligation be to keep them, or *e contra*]. Therefore such an Oath neither takes away nor excludes the Customary conditions, that is, such as are before mentioned, and are always supposed to be implied. Thus far that Judicious Author.

§. 6.
(a) *Juramentum sequitur naturam Actus super quem cadit, accessorium enim sequitur naturam principalis ut habet Regula Juris 42. in sexto itaque si actus habet tacitam Actionem, etiam Juramentum habere censetur: confirmatur, quia Juramentum non additur, ut promissio, propositum, aut contractus aliter accipitur quam per se accipi solet; sed ut eo modo Intellecta quo solent Intelligi non possint revocari itaque non tollit nec excludit solitas conditiones.*

If it be objected, that the General Oath, which the Fellows take at their Admission to observe the Statutes (which had the Kings Tacit consent) did oblige the Fellows to take that Oath before the Election and so to go to Election.

§. 7.
Objection.
See p. 16. here
& p. 25.

For Answer we may consider, that tho' an Oath in it self be lawful, especially so long as the Prince or Superior forbids not the performance of what was Sworn to, yet in the case of the *Magdalenians*, the King had expressly commanded them to choose one he appointed, and that Included a Prohibition, for he that Commands me to Elect this Man forbids me to Elect another, and this is agreeable to the Explication the Church of *England* gives of the Fifth Commandment.

Answer.

Commandment. He that Commands me to Honor Father and Mother forbids me to dishonor them. And Bishop *Sanderſon* (a) well obſerves, that if a Superior as ſoon as he knows the matter, doth preſently, openly, and peremptorily ſignifie to the ſubject his diſſent, and forbids that to be done which is Sworn to; Inſtantly that Tranſitory obligation of the Oath ceaſeth, and the ſubject, by force of the obligation to his Office or Supremacy, which is permanent and perpetual, is obliged to do contrary to what he hath Sworn to. And the ſame moſt Judicious Biſhop is ſo far from allowing ſuch ſubjects, at leaſt Fellows of Colleges, to reſiſt the Mandate of their Sovereign, under pretence that they have Sworn to the contrary, that he ſaith expreſſly, that the ſubject ought not in thoſe things in which he is ſubject to another, Swear to do any thing without at leaſt preſuming his Superiors conſent, his words are, *Non debet Subditus in iis rebus in quibus alteri ſubeſt Jurare ſe facturum quicquam abſque præſumpto ſaltem Superioris ſui Conſenſu.*

Hence in the Inſtance Biſhop *Sanderſon* brings of the Sons obligation to obey his Fathers Command, tho' it hinder him from performing his own Oath, he obſerves that the Son Swore to act with the Tacit conſent of his Father, which he had reaſon to ſuppoſe the thing being lawful in it ſelf, and yet the Oath is reſcinded, which directly Anſwers the Objection.

Second Objection.

It is further urged, that the Fellows bind themſelves by Oath, neither to ſeek to obtain any Diſpenſation with any of their Statutes, nor yet Admit of any directly or indirectly obtained, which is the higheſt of Tyes that an Oath can bind to, without a direful

(a) Si Superior quamprimum rem reſciderit Statim diſſenſum ſuum palam & peremptorie ſubdito ſignificaverit prohibueritque Id in quod Juratum eſt fieri ceſſare continuo obligationem Illam Juramenti Tranſitoria & ſubditum vi obligationis Officii qua permanent eſt & perpetua teneri contra quam Juraverat facere. *Sanderſon de Jurament. oblig. prælect. 7. ſect. 6. pag. 243.*

ful Imprecation, which is annexed in some Statutes.

To this I Answer, that such Oaths are ill imposed by Founders, not so much because the obligation is in it self not to be dissolved, but because it may perplex some scrupulous Consciences and may afford Umbrages to such as are unwilling to yield to their Superiors dispensation to insist more earnestly and tenaciously upon the obligation.

I rather believe such Clauses have been Inserted by Founders to prevent as much as in them lay, the Members of the societies to Innovate matters, than that they could foresee, that it was more obligatory by the addition of that Clause. We may easily Judge that all Munificent Founders would contrive all the ways whereby their Gifts, and the uses and applications of them might be perpetuated, as we see in several persons settlements of their Estates, whereby they endeavor to Entayl them to their Heirs past all possibility of Alienations; yet by the Laws of the Land, which are not favorable to such perpetuities, we find dayly examples of docking the most Artificially contrived Entayls.

Now that any Founder in the time when the Roman Catholic Religion was Established here, could think that such Clauses could be perpetually obliging, I can see no reason when they could not but know, that none of their Statutes or Constitutions had any force, but as they were confirmed by their Sovereigns whether Civil or Ecclesiastical, and in all such Cases, tho' the present Sovereigns, whether the King of *England* or the Pope did ratifie them, yet this could bind neither of their Successors.

For as to the King it is a Rule in Common-Law, that general words of an Act of Parliament where the King is not named cannot bind him, as may be seen in the Authorities Cited in the (a) Margent.

(a) Cro. 3d.

part. Ascoughs
case fol. 225 Or
Magna Charta
c. 11.

If therefore the Common-Law, which seems in many particulars less to favor the Prerogative, be so just to the King, that he is Exempted from the force of an Act of Parliament in which he is not named, surely he must be exempted from a College Statute in which he is not named, Secondly, If the King had been excepted by Name the exception had been Null, for the Founder neither if Living would have Exempted the Society from the Kings Paramount Jurisdiction, neither could, being a subject, if he would have done it as (b) Dr. Bayly urged to Mr. Prynn upon the Parliaments Visitation, Anno 1647.

(b) Cujus i. e.
Regis Juris-
dictioni sodali-
tium illud
neque voluisse
fundatorem, ne-
que (subditus
cum fuerit) si
vellet potuisse
omnino constare.
Wood Antiq.
Oxon lib. 1.
fol. 403.

Thirdly, If it be further urged, that the Founders Founded the Colleges and Endowed them on condition the King would allow the Society to be Governed by their Statutes, which is but an unproved presumption, as not appearing in any Charter I have met with, yet if such conditions were to be found, the Succeeding Kings at least are not obliged in point of strict Justice to observe such Orders or Decrees of their Predecessors, because *Par in Parem non habet potestatem aut Imperium*, and in such matters the Graces and Favors of Preceding Kings are alterable and suspendible at the pleasure of the Succeeding Sovereign, who cannot be Impaired in any Act of his Sovereignty by his Predecessor; so that to think that a King of England can by any of his Subjects Constitutions be bound from Visiting or giving his own Interpretation of the Statutes is a great weakness; of which I shall Treat more fully in it's proper place, and

and only Infer at present, that the obligation of any Subjects Oath neither to take nor Admit of any Dispensation, is in it self of no force to obstruct the Sovereign from dispensing, and when he doth dispense no Oath is obligatory to any that hath Sworn to observe such Statutes as are not in being while he dispenseth with them.

Thus much I thought fit to offer as to what relates to the Secular power. As to the Popes Dispensing it was very Incongruous and weak for any Founder to expect that the Members of the Society could oppose the Popes dispensation with any Statute which his Holiness for the time being should think fit to alter or Abrogate; for as (a) Bonacina determines, that tho' the Vow or Oath of any not to seek for a dispensation or relaxation of them, be valid as long as the Swearers Conscience is convinced it is profitable to his Soul to keep it, and not to seek a dispensation, as Rodrique and other School-men there Cited allow, and so in like manner not to use a dispensation, yet the Superior notwithstanding such a Vow or Oath may dispense, and the dispensation is valid, and Assigns the Reason, for that the Vow of the Subject doth not take away from the Superior the power of dispensing, as Azorius Cap. 19. Quest. 13. Sanchez. lib. 4. Cap. 8. n. 35, yea he further observes, that if one Vow (the like is to be understood of an Oath) not to do such or such a thing under the Penalty, that if they do it they cannot be absolved or dispensed with by any but the Pope; yet for all this they may be Absolved by the Bishop, for he saith, by this the Authority of the Bishop is not taken away.

(a) Validum esse votum aut Juramentum non petendi dispensationem aut relaxationem voti quomodocumque anima volentis utilium est non petere dispensationem — Superior tamen potest non obstante tali voto dispensare, & dispensatio valida est, nam votum subditi non aufert Superiori potestatem dispensandi. — Jurantes vel volentes, &c. sub pana, ut si fecerint non possunt ab alio absolvi vel dispensari quam a summo Pontifice, possunt adhuc absolvi ab Episcopo —

nam hujusmodi votum vel Juramentum non aufert Episcopo Jurisdictionem — Ita communiter D. D. Diss. 4. §. 2. punct. 1. n. 28. 29.

(a) Unde etiam
possunt dispen-
sare in voto non
petendi dispen-
sationem; hoc
enim non est
reservatum.
Lessius lib. 2.
cap. 40. Dub. 18.
n. 134. fol. 568.

Yea I find in *Lessius* (a) that the Confessors of the Mendicant Order can dispense with the Vow or Oath to take no dispensation, and that by a Privilege Granted them by the Pope, if they be partakers of the Faculties Granted to the Benedictines by Pope *Martin* the Fifth, because this is not reserved.

S E C T. III.

Some other Objections considered, either relating to the Visitation in General, or urged in Defence of some particular Members of the Society.

§. 1.

A Second Objection I have met with is, that the Bishop of *Winchester* being the Local Visitor appointed by the Statutes of Bishop *Waynflet*, it seemed more agreeable to a formal proceeding, that he should have exercised his power of Visitation before the King had ordered Dr. *Hough*, &c. to have been proceeded against by the Lords Commissioners for Ecclesiastical Causes.

To which I answer, First in the Resolution of a very Eminent Lawyer, that the Local Visitor is appointed and trusted by the Founder, and thereby hath a private Trust. But the King as King hath a public Trust by operation and construction of Law, and by his Sovereign Authority and Jurisdiction is Supreme Visitor, and may exercise that Royal Trust (as those of the long Robe use to express his Prerogative sometimes) when and as often as he pleaseth, without any Commanding or expecting the Visitation of the Local Visitor; and having the general care of, and
Inspection

Inspection into the Manners and Duties of his Subjects may not only Visit, Enquire into, and Reform the Members of the College as to their Actions, but also Visit the Local Visitor himself as to his doing and performances in or about his Trust.

Secondly, It is certain the Arch-Bishop of *Canterbury*, and the Bishop of *Lincoln*, as I have by many Predecessors cleared before, have Visited, notwithstanding the Local Visitors being appointed. Therefore much more may the King who is Supreme Visitor.

Thirdly, By the speedy Application of Dr. *Hough* to the Bishop of *Winchester*, before I presume his Lordship could have notice of the Kings Inhibition, he had Admitted him, so that he was so far become a party concerned, that it was no ways convenient for him to have proceeded in it.

Fourthly, The Local Visitor is appointed only for the ease of the Crown in ordinary Cases. But it cannot be supposed that if a Local Visitor should neglect to do his Office, or should be partial, there should not be a power in the Sovereign to order the Visitor, seeing it would be a great deficiency in the Oeconomy of Government, that a power should not be lodged some where to compel a Local Visitor to do his duty if he failed in it, which can ultimately remain in none but the King.

In the third place in the particular concerns of Dr. *Hough* it is urged, that the Sentence against him could not be good in Law, since he was not Cited before the Lords Commissioners at *Whitehall*, nor appeared in person or by Proxy before them, nor had his cause brought before them when Sentence of Expulsion was given against him, which those that are

his

§. 2.
The third Ob-
jection.
See here p. 67.

his favorers Censure as very hard usage that one should be condemned unheard.

In Answer to which it must be considered, that the King by his Mandate having set aside and suspended the College Statutes for Electing a person Qualified within those Statutes and empowering the College by his Royal Command without breach of their Founders Rule, and their Oath upon it to Elect a person not capable of being Elected by their College Statutes, as hath been abundantly cleared in the last Section, Dr. *Hough* was not to be considered as duly Elected, and so *revera* was no President, therefore could not be taken cognizance of as such.

But as Fellow he was Cited, and did make appearance, and was heard as the rest of the Fellows were, and under other Circumstances he was not Legally to be taken notice of. His cause likewise was before the Court, in that the Vice-President and Fellows that were Electors were Cited, and their Plea for their Election was Examined and discussed, and upon full hearing was by the Lords Commissioners Adjudged to be void and null, so that the Vice-President and Delegated Fellows were in this Case his Proxies.

§. 3.
The fourth
Objection.
See here p. 67.

It is Fourthly objected, That Dr. *Hough* was Ejected out of a Free hold for Life without any Writ of Ejection or Tryal at Common-Law, contrary to the freedom of a Subject.

To this I Answer, That there are two sorts of Free-holds, *viz.* Absolute and Conditional; as to the first it is true, that no person can be dispossessed of it, but by due course of Law, and in case of resistance no other way but by the Sheriff and his *Posse Comitatus*. But in a Conditional or Attendant Free-hold as this
of

of a College is, a Man may be dispossessed without that Course if he perform not the Condition of his Free-hold, so *Thomas Coveney* sometime President of this College was deprived of his Free-hold Attendant on the Presidentship, for that he was not entred into Holy Orders, and another substituted in his place without a Sheriff or *Posse Comitatus*, for not performing some conditions required by his Office, tho' duly Elected. Therefore much more might *Dr. Hough* be Ejected by the Lords Commissioners Sentence, who never was *de Jure* President.

In this Case the Free-hold is only Attendant upon the Office, so that by whatever Legal proceeding, the Office is declared and adjudged void, by the same the Attendant Free hold ceaseth, any more to appertain to the person Ejected or Deprived. So a Parson hath an House and Glebe-Land, and by his Ordinary is suspended or deprived *ab Officio & Beneficio*, immediately his Right ceaseth, as to that Free-hold, during his suspension or deprivation, yea it is more here, for he is as a person Dead.

So in any like Case, an Officer that hath an House, Garden, &c. annexed to his Office, and holds that Office *durante beneplacito Regis*, this is his Free-hold while he holds the Office, but when ever the King gives him a *Supersedeas*, the Free-hold Attendant upon that Office from that moment ceaseth to be his Free-hold; now the Decree of the Lords Commissioners of Deprivation, Expulsion or Suspension is as much a final Judgment against *Dr. Hough*, whose Cause was of their Cognizance, as any Verdict in a Court of Common Law for Ejection, &c.

Hence the Reader may Judge how groundless and bold an Assertion it was in *Dr. Stafford* to say, that

See here p. 75.

that as to the Decree of his Majesties Commissioners against Dr. Hough, they humbly conceived it was null and void in it self, he being thereby depriv'd of a Free hold for life, the which he was duly and Legally possessed of, without ever being called to defend his Right or any Misdemeanor objected against him. When the Doctor could not but know that Dr. Hough had neither Right to Presidentship or Free-hold, if he were not duly Elect'd, and that he could not be, if the Kings Mandate and the re-inforcing of it upon the Petition of the Society, that he would be obeyed, was of any force, as I shall in the next Paragraph further clear.

§. 4.
The fifth Ob-
jection.

See here p. 78.

Answer.

It is Fifthly objected, that it doth not plainly appear, that a Mandate implyes a Prohibition, especially when the person propos'd is by the Statutes of the College in no capacity to be Elect'd, it being, as Dr. Stafford urged, a contradiction in *Terminis*, that to Command to Elect a person incapable, should oblige not to Elect a person capable.

To this first I Answer in General, That the Mandate having those express words in it [*Any Statute, Custom or Constitution to the contrary in any wise notwithstanding, wherewith we are Graciously pleased to dispense in that behalf*] takes off all disability from the person to be Elect'd. As the Kings Pardon Absolves the Criminal from undergoing the Penalty of the Laws, and restores him to the condition of a good Subject; so that the person being in all respects as capable as if he had been Statutably Qualified, as in the Answer to the first Objection I presume is cleared. The Question is first, whether any thing was to be done by the Fellows but to obey after they had received his Majesties Answer to their Petition.

And

And Secondly, whether that Mandate Implied an Inhibition and Command to chuse no other.

As to the first part the whole Discourse hath been a Set of Arguments to prove by a Deduction of Instances, the obedience that hath, or ought to have been payed to the Kings of *England* in all Cases where they have Insisted upon having their pleasure obeyed: And there is good reason for it, since there hath been either an * Express or Tacit reserve, according to the Construction of the Law, in all the Grants made to the Universities or particular Founders, Impowring them to make Statutes, that the Kings should have a power to alter, change, amend, abrogate, or annul them at their pleasure.

* So I find that King Henry the 5th. especially reserved to himself and Successors, the power of dispensing with any of the Statutes made or to be made, as

appears in a dispensation for Residence granted to Dr. *Blanford*, 21 Aug. 1663.

However the Kings of *England* have by their Gracious Concessions in other particulars limited their power to act conformable to Laws made: Yet in this particular of College Statutes, it may be truly said of them, as of the Roman Emperors, what (a) ever pleaseth the Prince hath the force of a Law, as may be seen *Cod. de constit. principis l. 1. In principe & Instit de lege naturali §. sed.*

(a) Quicquid principi placet, legis habet vigorem instit. de lege naturali §. sed.

So we find in the Civil Law, whatever (b) the Emperor appoints by his Epistle and Subscription is to be esteemed a Law. This may look like a Character of an absolute Prince who is *Solutus Legibus*; but it is what is most true in Relation to Universities for by the constant practice it is experienced, that tho' sometimes Mandates of our Kings have been eluded or evaded, or by Petitions have been Recalled; yet when our Kings Insisted upon them they

(b) Quodcumque igitur imperator per Epistolam, & subscriptionem Statuit Legem esse constat. quod principi Fide constit. Princ. Tit. 4.

R r

were

(a) *L. merito*
(c. 2. *sed de*
F. quod infra.
Accursius in
commun.

(b) *Princeps*
Rescribens
contra jus si
sit certificatus
de ipso facto
videtur quoad
hoc illud jus
sollere Lance-
lotus de Atten-
tatis par. 2.
q. 4. Limit. 18.
n. 6.

See here p. 8.

(c) *L. obligatio*
Mandat. §. 2.
Ideo Mandati
vel contra.

(d) *L. si quis*
alicui 27. §. 2.
qui Mandatum
F. Mandati vel
contra.

were obeyed, according to the words of the Digests (a) that a Mandate requires a ready obedience, so that in Civil Law it is a known Rule, that *Rogatio Domini preceptum est, & Mandatum Spontaneam obsequii praestationem praesert.* Instit. ut de Attil. Tut. §. penult. And the absoluteness of a Mandate is yet further cleared by the Rule in Civil Law, that the Prince (b) Re-scribing, that is, Re-inforcing his Mandate contrary to Law, that is, contrary to such Statutes that he hath power to Abrogate, if he be certified of the special Fact, seems as to that particular, to Abrogate the Law or Statute.

It is clear also that a Mandate may either be by Epistle or Message, which shews, that the Fellows of the College were to receive the Kings Answer by my Lord President, when they delivered their Petition against Mr. Farmer, that the King would be obeyed, as a Re-inforcement of the former Mandate; seeing the words of the Law are *Ideo per nuncium quoque (c) per Epistolam Mandatum suscipi potest*, and what part they are to Act that receive such Mandates is clear by what we find thus expressed — *Qui Mandatum (d) suscepit, si potest id explere, deferere promissum Officium non debet, alioquin quanti Mandatoris Interfit damnabitur. Si vero intelligit explere se id Officium non posse; Id ipsum quam primum poterit debet Mandatori nunciare. Ut si velit alterius opera Utatur; quod si, cum possit, nunciare Cessaverit, quanti Mandatori Interfit, tenebitur. Si aliqua ex causa non poterit nunciare securus est.*

The Sense of which is, that he that receives a Mandate, if he can do it ought not to defer the performing of it, otherwise he shall be condemned or punished so deeply, as the concern of him that sends the

the

the Mandate is ; but if he understands, that he cannot fulfil the Command, he ought upon the first opportunity by Message to relate this to him that sends the Mandate, that he may employ another, and if when it is in his power, he surcease from doing of it, he shall make satisfaction to him that sent the Mandate as much as he is Interested. But if for some cause he cannot return this Message, he is excused.

That the signification of the Kings pleasure in this case is sufficient appears in that Rule often inculcated by our (4) Author, if the will and pleasure of the Prince appears, we are not to doubt of the power.

(n) Si de voluntate appareat de potestate non est disputandum. Id. a. cap. 4. 12. n. 5.

As to the Second Question.

That this Mandate included a prohibition to choose any other person besides him that was named in the Mandate, seems clear to me by the known Rule *Intus existens prohibet alienum*.

§. 5.

If therefore the Fellows were bound to choose him whom the King appointed by his Mandate, then surely they could choose no other, and that is enough to make a prohibition : For the person who is bound to choose one Commanded, surely cannot choose another, for he hath no liberty to choose any but him for whom the Mandate was directed ; so that there seems no Medium, but either to obey, and then the liberty of all other choice is taken from him, which amounts directly to the prohibition of all other persons, or he should Suspend all Election, till he had prevailed with the King to have re-called his Mandate, and this had been, tho' not exquisite Dutifulness, yet, a more civil respect to the King.

See this replied to in the Answer to the first Objection cap. 7. sect. 1. parag. 7.

This was what Dr. Tho. Smith prudently advised the Morning of the Election, here pa. 7.

(a) *Mandato contineri ea videntur sine quibus Mandatum explicari non potest. l. Inuitus 19. Tit. de procurat.*

(b) *Mandato aliquo ea quodque Mandata intelliguntur quae ex eo consequuntur. l. Indebit. 47. de condit. Indebit.*

(c) *Contra veniens Inhibitionem incurrit poenas Inhibitione contentatis. Idem n. 17. dehinc videmus quod Inhibitione contra veniens videtur Judicem in sua Jurisdictione contra venire De Attentatis par. 2. c. 29. n. 10.*

But in the Civil Law we find, that those things (a) are Judged to be contained in a Mandate, without which the Mandate cannot be explained. Now I think it is impossible to explain the positive Mandate to choose Mr. Farmer, without understanding, that by that the choice of all other persons was forbid, which is still made apparent by another Law, (b) that in any Mandate, those things also are understood to be Commanded, which follow naturally or *consequenter* upon it, as it doth in this Case, that if Mr. Farmer by vertue of the Kings Mandate was to be chosen, none other could be chosen, or what is æquivalent, all other persons without a revoking of that Mandate were forbid to be chosen.

Upon this supposition therefore, that an Inhibition was in the Case, it is easie to conclude how great a Crime it was in the Fellows to disobey, for it was no less than to dispute the Kings Sovereignty, and Jurisdiction, than which there can be no Crime greater but open Rebellion, for there is but that difference betwixt one that draws the Sword to resist the Kings Authority, and one that by Vote and obstinacy doth it, but that one is Armed and the other un-armed, for the denying the Authority is alike in both.

Therefore we Read in *Lancelottus*, that he that contravenes (c) an Inhibition is said to contemn the Judge in his Jurisdiction, and the like must be said of the disobeyer of the prohibition of a King; now what a Crime the contempt of a King is, may best be learnt from the punishments the Laws of all Nations inflict upon the Transgressors; a measure of which, because those unfortunate Gentlemen have felt by their persisting to the last in so great an obstinacy,

stinacy, I shall not at present touch upon.

As in an Inhibition, the Prince or Superior that forbids, by that very Act seems to will, that no Act shall be valid which is against it, so a Command to do any thing must be a forbidding of doing the contrary, as *Lancellottus* observes.

§. 6.
Is qui Inhibet eo ipso videtur velle quod si contra fiat Actus non valeat. Idem Ampl. 10. fol. 375. Non solum Regula procedit in Inhibitione expressa verum in Inhibitione Tacita pro ut est illa que resultat ex avocatione causa quam princeps ex certa scientia facit, quoniam per hujusmodi avocationem videtur Princeps Judici & partibus Inhibere. Idem Amp. 4. n. 2.

The Civilians do further distinguish betwixt an Express and a Tacit Inhibition, as when a Prince doth avocate the Cause from any Court; for when a Prince doth this of his certain knowledge, he lays an Inhibition on the Judges and parties. So in this Case of *St. Mary Magdalen* College, the King took away from the Fellows the liberty of choosing such a person as their Statutes obliged them to choose, by the dispensing with the Statutes; therefore in that he seems plainly to Inhibit their Electing of any according to the Letter of the Statutes as before I have cleared in the Answer to the Objection, *Chap. 7. Sect. 1. §. 7. pag. 295.* here to which I refer the Reader.

See here p. 73.
74

Therefore the Dilemma of *Dr. Stafford* seems to have no such contradiction in *Terminis*, that his Majesty in Commanding the Fellows of the said College to Elect *Mr. Farmer* President, should thereby prohibit them to Elect any other person whatsoever. Because that power of Election is as much, but no more than the *Conge de eslier*, for a Bishop where the Title of Election is only *pro forma*; but the Chapter can Elect none but who is Nominated by the King, and for his being unqualified that is no sort of Objection, since the dispensation as effectually caseth and nulls the Statutes, enjoyning those qualifications for the time, as if they had never been extant.

By

Manus Appositionis Papae natura ea est ut omnium Inferiorum potestas per eam Ligata censetur Idem cap. 12. limit. 52. n. 15.

Idem cap. 4. declar. 4. n. 6.

Idem cap. 20. n. 14.

§. 7.
See here p. 4.

A parallel case in King Edw. the 6ths. time.

The reason why the Author inserted this no sooner.

By such Mandates the King lays his Hand upon the Statutes, which in Civil Law is Styled *Manus Appositio*. Now I find two of those, viz. the Popes laying on of Hands, which is described to be of that nature, that the power of all Inferiors is thought to be bound by it; and the laying on of the Hand of the King hath the power of a *Nullitive* Decree, and Derogation, and works more than a Reservation, the words of my Author are, *Principis Manus Appositio habet vim decreti annullativi & derogationis, & operatur plus quam reservatio.*

Hence we may conclude by the Civil Law, that after the Inhibition, tho' Tacit, the Fellows ought not to have proceeded to Election, no more than other Courts could go on in their process after an Inhibition, according to that Rule *processus post Inhibitionem factus, Regulariter est ipso Jure nullus.*

That I may more clearly Answer this Objection, and shew that however the Bishop of Winchester in his Letter to my Lord President alleged, *that the Rules of the College Statutes had been hitherto constantly observed, excepting in the times of Rebellion*; I shall give an account of one of the Presidents of this College, who was no ways Statutably Qualified, and yet was Elected by King Edward the Sixths Mandate.

I have deferred the Narrative of this, which I might have brought in sooner, in hopes to have got a more particular account of it out of the Registers; but tho' I have solicited the procuring of it several ways; yet by the taking away of one of the Keys where it was kept, access could not be had to it. So I Writ to Mr. Wood who Compiled the Learned and Laborious History of the Antiquities of that Uni-

University, in hopes that out of some of his Notes I might have been supplied. But I received the following Letter from him, which giving me so little hopes of further Information, I must content my self with what he hath published. That part of his Letter relating to this matter is as followeth.

SIR,

When I perused *Magdalen* College Registers, A. B. C. &c. in order to the drawing up the Histories of that House, I did not in the least dream what would come to pass relating to the Office and Election of a President; otherwise I should have Collected all, and consequently have been more full in the matter.

What I have said of Dr. *Haddon* was from several Commendatory and Mandatory Letters, and Answers to them in the Register E. all which being by me perused, and finding them very tedious to recount, I only made mention of them in General, and have not so much as a Docquet of them by me, &c.

June 21. 1688.

A. WOOD.

The History in short, as to be found in the foregoing Author, is thus, *Walter Haddon* Doctor of Laws, was bred in the University of *Cambridge*, and took his Degrees there, and so was neither of the Foundation of *New College*, nor of *St. Mary Magdalen* College, whereof he ought to have been a Member according to the Founders Statutes: Yet King *Edward* the Sixth, Anno 1552. 5 Regni by his Mandate Commanded him to be Elected President. The Society opposed this Strenuously, no doubt upon

the

Wood *Antiq.*
Oxon lib. 2.
fol. 191. a.
Gualterus Haddon *Juris* Civilis Doctor post multas inter Regem & Societatem hinc Mandatorias illinc excusatorias literas (quippe admissioni ejus omnes se strenue opposuere) tandem ultimo Sept. Anno 1552. Electus est.

the like grounds, that he was not Statutably Qualified, this occasioned a re-inforcing the Mandates, and the Excusatory Letters of the College. However at last they yielded to the Kings Mandate, and on the last of September the same Year, he was Elected President.

This exactly parallels the present Case of St. Mary Magdalen College: Yet we find the Kings Mandate then was at last obeyed; and Dr. Haddon was Elected: Whereas the late Ejected Fellows might have kept their Fellowship, if they had but yielded to Admit the Bishop of Oxford, or submitted to him and owned the Kings Authority, which surely could not happen for want of knowledge of this precedent; whereof if I can obtain a fuller account before the publication hereof, I will insert it in an Appendix.

Idem ibid fol.
191. a.

There is an Instance also of a President removed from his Office by the Bishop of Winchester as Visitor; and what was alleged against the President Dr. Thomas Coveney, was that he was not in Holy Orders, and had treated some of the Fellows roughly, this was betwixt the Years 1560. and 1561. the 3d. or 4th. of Queen Elizabeth.

§. 8.
The sixth Objection.
See this in Dr. Fairfax's Case, in the Oxford Relation, f. 27. col. 1.

It is Sixthly Objected in behalf of Dr. Fairfax, that his Suspension could not be according to the Rules of Law, since it was for his not obeying the Kings Mandate, in Electing Mr. Anthony Farmer, and his Suspension was not affixed on the College Gates till five days after Mr. Farmer was proved before the Lord Commissioners to be incapable, by reason of his Immorality. So that as the Sentence was severe, so the Execution of it was more rigid after Mr. Farmer was exposed, as they allege.

In

In Answer to this, it is well known, that at the first hearing of Dr. *Fairfax* before the Lords Commissioners at *Whitehall*, he denied the Authority of the Court, alledged that he should have been proceeded against by Libel, and have had a Copy of his Charge, and used such expressions as gave just offence to the Court; so that tho' the Sentence of Suspension was pronounced, for *his Contempt in not obeying His Majesties Letters Mandatory, for Electing and Admitting Mr. Anthony Farmer President of that College*; yet if it had not been because of his disagreeable deportment to the Court, it is probable he had at that time no more Incurred the Censure of the Court than the rest of the Fellows, who concurred in the said Election.

Answer.

See p. 35. here.

As to the affixing the Sentence on the College Gates, that was not a material circumstance, nor whether Mr. *Anthony Farmer* was then or after laid by, or whether he was unfitting, by reason of his Immorality or otherwise.

See chap. 1. sect. 2. p. 43.

It is necessary for every Court to Assert it's Jurisdiction, and much more ought the Lords Commissioners to do it, being they have such Ample powers from the King, so that whatever Contempt was offered to their Lordships, was to the King himself, and that Dr. *Fairfax* persisted to the last in denying the Authority of the Lords Commissioners, and disobeying the Kings Mandate for Admitting the Bishop of *Oxford* President, or submitting to him as such, appears by his last Answer to the Question proposed *October the 25th.* whether he owned their Lordships Jurisdiction? To which he replied, Under Correction he did not: And being asked whether he would submit to the Bishop of *Oxon* as President? His Answer

See here p. 84. 85.

Sf

swer

swer was, he would not, nor could not, because he was not his Legal President.

Whoever considers this obstinacy, persisted in to the last, cannot think the Lords Commissioners could do less than they did. Had this been done in another Kings Reign, perhaps it might have been Interpreted a Questioning the very Supremacy it self; which how fatal it was to *John Fisber* Bishop of *Rocheſter*, and *Sir Thomas Moor*, is worthy to be considered, both as a demonstration of our Kings Clemency, and that the Doctor hath not so much reason to complain of the hard usage.

However the Doctor thought himself obliged to the observation of the Statutes, and to submit to the President only, he and the rest of the Fellows had chosen; yet he ought to have considered, what *Baldus* in his Comment upon the *Code 3. Tit. 14. n. 7.* faith, **That those that are in any College by reason of their Profession or Negotiation there, ought not to refuse the Jurisdiction of him that presides in it, yet they are no less subject to the President or another Superior, which Superior, or rather Supreme I take the King to be.*

Besides, if the Doctor and the rest of the Fellows would have considered, that in relation to College Statutes (however it may be disputed in other matters) the King hath the same power as the Emperors had; and that is to be found in the Digests thus.— **Therefore whatever the Emperor appoints by Epistle and Subscription, or knowing doth Decree, or plainly doth express, or Commands by Edict, is to be esteemed a Law. Which is Literally true in all the Kings power of dispensing with, or Suspend-
ing College Statutes, for since it is clear by ma-*

* *Qui sunt in aliquo Collegio ratione professionis vel negotiationis, Jurisdictionem ejus qui praest Collegio recusare non possunt, non minus tamen sunt sub praeside vel alio Superiore.*

* *Quodcumque igitur Imperator per Epistolam & Subscriptionem Statuit, vel cognoscens decrevit, vel de plano Interlocutus est, vel Editio praecepit, Legem esse Statuit. Dig. lib. 1. Tit. 4. n. 1.*

ny Instances before insisted upon, that the Kings of *England* have power to alter, abrogate, and annihilate Statutes of Colleges, much more must they have the power to Dispense with, or Suspend them.

Therefore when any person refuseth to submit to the Kings Authority in this particular, he is deservedly punishable by Suspension or Deprivation. Neither ought Fellows of Colleges assume to themselves a power of Judging of the Reasons why the King Grants Mandates in favor of any particular person, or to deny their obedience to the person so recommended by Mandatory Letters, because they have heard or can prove some Immoralities against him; for if that liberty of opposing the Kings Mandate upon any such grounds were once allowed, the Kings power must be solely precarious, and every Mandate of the Kings would be lyable to disputes and debates, and the Kings Sovereignty and Authority would dwindle to an Impotent wish, that he might obtain his desire instead of being positively obeyed, which would be such a condition of the Monarchy as would render it contemptible; and whoever endeavors to lower the Dignity of the Crown in such a manner deserves just Chastisement for it; which was but the bare Suspension of the Doctor from his Fellowship at first, but by his persisting in his undutifulness to the highest Degree of denying the Kings Authority, he was justly punished by Expulsion, and after with Incapacitating.

It is Seventhly Objected by some of *Magdalen College*, that no Commission can be granted under the Great Seal to Visitors, to place and dis-place Mem-

§. 9.
The seventh
Objection.

These are the
words of the
Oxford Rela-
tion. pag. 21.

bers of Colleges (whose places are Free-holds) *ad Libitum* or discretion. But they must proceed according to Legal discretion, that is, by the Laws and Statutes of the Land, and Local Statutes of the College. And places concerned [consigned rather] for the Headship and Fellowships of Colleges are Temporal Possessions, and cannot be Impeached by Summary Proceedings.

For this they Allege the Case of Dr. *Thomas Coventry* President of the same College, who was deprived in Queen *Elizabeths* time by the Bishop of *Winton*, the Local Visitor thereof, Established by Royal Authority, and he Appealed to the Queen. But by the Advice of all the Judges it was held, that the Queen by her Authority, as Supreme Visitor could not meddle in it, but he must bring his Action in *Westminster Hall*, because Deprivation was a cause merely Temporal. The King, they own, has a great Authority Spiritual as well as Temporal, but no Commissioners can be Authorized by the Crown to proceed in any Commission under the Great Seal or otherwise, but according to Law, in Spiritual Causes by the Canon Law, in Temporal by other Laws and Statutes of the Land. And wherein the Proceedings in some Commissions, are directed to be *Summarie & de plano sine strepitu forma & Figura Judicii*, those words are to be applyed to shorten the Forms of Process, and not for matter of Judgment. For *Magna Charta* provides for our Spiritual as well as Temporal Liberties.

§. 10.
Answer to it
by parts.

To Answer this Objection distinctly, we must consider the several parts of it, for it is an huddle of several matters jumbled something confusedly to set off the matter more plausibly.

In

In the first place it is urged, that no Commission can be granted under the Broad Seal to Visitors, to place and dis-place Members of Colleges, but, so as they must proceed according to Legal discretion, viz. by the Laws and Statutes of the Land, and Local Statutes of the Colleges. By this Allegation they would Insinuate, that the Lords Visitors did not proceed according to such Laws and Statutes, nor could proceed summarily, as in the latter part of the Objection they Insinuate.

To this I reply, that the Kings Prerogative in such Cases is to be taken and accepted as a Fundamental of the Laws of the Land; and I hope I have sufficiently cleared the continued use of the Kings of *Englands* exercising this power in granting Commissions to Visit the Universities, and particular Colleges, &c.

The Kings Prerogative a part of the Law of the Land.
See chap. 4.
§. 1. & 2. here.

Amongst the Patents 26 E. 3. There is a Commission directed to several Commissioners to Visit *St. Mary Magdalen College in Rippon* (which by the Foundation of that College was under the Visitation of the Arch-Bishop of *Tork*) and to enquire of the several mis-carriages of the respective Members, and whether they consumed, or wasted any of the Lands or Goods of that College, and to return the same to the King who would take care therein.

Pat. 26 E. 3. part. 2. M. 5.
The Kings of *England* grant Commissions of Visitation in several Cases.

So in the Parliament Rolls (a) the Universities of *Oxford* and *Cambridge*, complained in Parliament of the Fryers Mendicants of both the said Universities, how Injurious they were to the Ancient Immunities of the Universities, and how faulty and offensive they were to them, and it was declared and resolved in Parliament, that the King had sole power to redress those Controversies at his Will and Pleasure.

(a) Rot. Parl.
40 E. 3. n. 12.

In

(a) Placit.
15 E. 2. n. 10.

In the Plea (a) Rolls 15 Ed. 2. It is declared, 'that
'the King hath an absolute power to punish contempts
'and the offences against him as Supreme Ordinary,
'without proceeding in the Common and usual
'Course of Judicial proceedings.

So Conformable to this King Henry the 8th. granted
his Commission for the Visitation of Monasteries,
and displacing several Monks and other Regulars
for their mis-carriages, as the Inquisitive Reader may
find in Dr. Burnets History of the Reformation, and
that by his Sovereign and Supreme Authority with-
out Act of Parliament.

(b) Rot. Pat.
3 E. 6. 1 part.

So King Edward (b) the 6th. Commissioned
Cranmer, Ridley, and others to proceed *de plano* in a
summary way against Bonner, by the Examination
of Witnesses against him, and so to Imprison, Sus-
tend or Deprive him, as they saw cause; in pursu-
ance of which Commission they Deprived him of
his Bishopric.

(c) Rot. Pat.
1 Maria part. 7.

So Queen Mary (c) granted Commission to the
then Bishop of Winchester and others, to Impower
them to proceed in a summary way, to the Depriva-
tion of the then Arch-Bishop of York, and other
Bishops.

(d) Pat. 24
June, 1 Regni.

So Queen Elizabeth (d) granted Commission to
the Earls of Derby and Northumberland, and others,
to Visit all the Clergy in the North, to place and dis-
place them as they saw cause.

§. 11.
Inferences from
the foregoing
Records.
See chap. 4. 56,
and 7. here.

By all which Authorities, the Opinion of Par-
liaments, the Antiquities of Presidents, and frequent
Instances in later days, which I have abundantly
produced in the foregoing Chapters, I hope I have
convincingly cleared, that the King in all Ages by
his Prerogative hath Regulated and Reformed Uni-
versities

versities and Colleges, punished their offences, placed and dis-placed their Members, without any thing of the Ceremony of *Westminster Hall*, and have been advised by their Judges and Learned Council, that it was their Prerogative to proceed by their Commissioners Delegated by them in a summary way, to the Suspension and Deprivation of the Bishops and Clergy; nor can it be denied, but the Bishops of *England* have great Free-holds, Temporalities, and Honorable Baronages to lose by such Deprivations, and such were more considerable in the Eye and esteem of the Law, than the Exhibitions, Headships or Fellowships of any College.

☞ Hence it may be noted, that since our Kings have exercised such a power over Monasteries, Colleges, purely Religious, Arch-Bishops and Bishops, they may much more exercise the like over Universities and Colleges, since whatever power they or their Founders had or have, it was never given them by any Statute, or any part of the Common Law, it being the Kings sole Prerogative to Constitute Corporations or Bodies Politic, sole or Aggregate, Ecclesiastical or Civil, under several and distinct qualifications, conditions and trusts; and the Universities and Colleges derive their Existence from the Royal bounty of the Prince who made them Corporations, Constituted them by the direction of their respective Founders, Bodies with Heads, and Members to be Governed by such Rules and Statutes, as the Founder by the *Kings Licence* should appoint: But it was never certainly Intended, that the King by such Grant or Licence should Delegate such Authority to Founders, Visitors, or the Members of Colleges, whereby to injure his Prerogative or determin the Supremacy,

The Kings of *England* exercising the power of suspension and deprivation by Commissioners upon Bishops, Abbots, Priors, &c. may well do it on Members of Colleges.


See chap. 4. §. 1. here.

macy, which the Law of the Land had Annexed to his Imperial Crown, as at large I have cleared before.

See cap. 4.
here.

That the King is Supreme Head and Visitor in all Ecclesiastical and Civil causes, hath been fully proved; and that from the King all Judges Ecclesiastical and Temporal derive their Authority: And sure a Delegation of power from the King can be no Bar or Estopple to the King to exert his Prerogative, that he thereby can be concluded from Delegating power to others to correct and reform mis demeanors and offences in Communities created by him, or his Ancestors, or to supervise the Actions and Management of his Judges Ecclesiastical, Local Visitors, or persons Commissioned by him.

As to Dr. *Thomas Covenens* Case, I shall consider it when I come to Treat of Appeals.

§. 12.  Whether Colleges be of Temporal or Spiritual nature.

Concerning the Temporal Estates of the Fellows, and the profits of the Fellowships being Free-holds, that alters not the Case of the Kings power of Visiting; for altho' it is disputed by Learned Authors, whether Colleges be of a Lay or Spiritual nature; yet it is most clear, that they have undergone Visitations; the reason of which is, because they are the Nurseries of Learning and Piety, Qualifications of great Moment to the well-being of Government, and consequently require the Princes special care, since upon the purity or impurity of these Fountains much good or bad must be derived to the Sovereign and Subject: And altho' in the Universities some Studies relate not at all to Divinity, as Civil Law, Physic, &c. yet the Body of the Students generally are bred up to Divinity, and the hours of Devotion, Lectures in Divinity, Disputations, &c. are mostly about Spiritual

ritual matters, *in Ordine ad Spiritualia*, and Grammar Schools being for Education, Vertue and Learning are called Spiritual, much more Colleges which are Founded *ad Studendum & Orandum*, and if there were none of these considerations, yet it is well known, that Colleges are to an Eleemosinary end, and it is clear in the sense of the Law where persons are lay there may be a Spiritual end, 11 H. 4. 47. of which matter the curious may find more in * Dr. *Patricks Case*.

* *Keebler Reports* 1d. part pag. 166. &c.

As to the Statute of *Magna Charta*, altho' it grants and confirms many Liberties and Immunities to the people, yet it does not deprive the King of his Prerogative, who hath the power to Create Courts at Law, and give them Jurisdiction, as also to Establish Courts by Commission for Regulating deceits, oppressions, frauds, and other matters, as seems best to his Royal Will, which is no encroachment on our Liberties, Temporal or Spiritual, as is objected.

The Kings Prerogative is not against *Magna Charta*.

This leads me to the Eighth Objection made by the favorers of the Ejected Fellows, *viz.* That it is contrary to the Laws of the Land, that any person should be deprived of his Fellowship by the Lords Visitors, without having liberty to Appeal to the King in his Courts of Justice, as Dr. *Hough* words it, in his Protestation against the Illegality, and Injustice of the Lords Visitors Sentence against him, and Dr. *Fairfax* in his Protestation in the same words with the Addition, as the Laws, Statutes, and Ordinances of this Realm will permit in that behalf, whose Case differed from Dr. *Houghs* in that particular, that Dr. *Fairfax* had long enjoyed his Fellowship, and was Ejected for his disobedience to the Kings Mandate, whereas it was disputable, whether Dr. *Hough*

§. 13.

The eighth objection concerning liberty of Appeals.

See *pa. 70.* here.

See here *pa. 116.*

was lawfully Elected President. But in one particular they alleged, that their Cases were alike, in that they might have remedy against all such dispossession of Headship's or Fellowship's in the Kings Courts, where relief in all Cases of Property and Free-hold ought to be had.

Dr. Coveney's
Case urged.

§ In Corroboration of this, they bring the Instance of Dr. Coveney, as in the last Objection is urged, that he being deprived by the Local Visitor, and Appealing to the Queen by the advice of all the Judges, it was held, that the Queen by her Authority as Supreme Visitor could not meddle in it, but he must bring his Action at *Westminster Hall*, because deprivation was a cause merely Temporal.

§. 14.
The Answer.

Chap. 5. sect. 1.
§. 10. sect. 2.
per totum
sect. 6. 3.

In Answer to this, *First*, It is apparent in matter of Fact (by what I have before from Records made clear,) that Heads of Colleges, Fellows, &c. have been Expelled and deprived by Commissioners for Visitation, as appears in the places quoted in the Margent.

Coke Instit. 4.
fol. 339. 340.
341. Stephen
Gardiners
Case.

Secondly, It is owned, that it is not only an usual practice of the Crown to grant Commissions *ad revocandum* the former proceedings before the proper Judges; but likewise the Kings have often granted Commissions with a Clause of *Appellatione remota*, which is a definitive conclusive Sentence, from which no Appeals lies.

Appeals according to the
Statute 25 H. 8.
c. 19.

§ For clearing the point more fully we may consider, that the Statute 25 H. 8. c. 19. grants an Appeal from any of the Arch-Bishops Courts to the King in Chancery, where the King may by Commission, Delegate others to determine that Appeal according to the direction of that Act, but where Sentence is given by Commissioners Delegated by the Prince,

Prince, and not in any Bishops Court, as by Visitation pursuant to the Statute 1 *Eliz. c. 2.* there Appeals from such a Sentence is not within the Statute of 25 *H. 8. c. 19.* Yet the King may grant a new Commission to revise the former Sentence.

Likewise there may be an Appeal to the King in person from all Courts Erected by his Prerogative, as from the High Court of Chancery, *Coke 4. Instit. fol. 340.* and it is upon Record by Commission 14 *Jac. 1.* as the words are, 'that it appertaineth to our Princely care and office only to be Judge over all our Judges, the meaning whereof can be no other, than that from the Judges Sentence and Decrees there may be an Appeal to the King in person, 2 *Andersons Reports fol. 163.*

Appeals to the King in person.

14 *Jac. 1. par. 6. n. 25.*

See at large in *Mr. Williams Jus Appellandi ad Regem 1 part.*

So by the Commission granted by the King to the Commissioners to Visit *St. Mary Magdalen College in Oxford*, the Commissioners were a Court, then only for that purpose created by the King, and from any Sentence or Decree pronounced by them, the Fellows might Appeal to the King in person, but could not Appeal to any Court in *Westminster Hall*; so that the Appeal to the King in Chancery is in such cases as are particularly limited in the Statute, of matters in suits, in the Courts of Bishops, as Judge *Rolls* observes, who likewise affirms, 'that if a suit be by a Commission General of the King, no Appeal can be to the King in Chancery, by the words of the Statute, for in such Appeals to the King it must be General as he is Supreme Head of all Ecclesiastical Jurisdiction within the Realm, and this must be by a Bill Signed by the King, after which the King may grant a Commission to Delegates to hear it.

Goodmans Case 4 Instit. 340.

Rolls Abridgment part 2. fol. 233.

The case of
Dr. Coveney
not rightly
stated.

Dyer's Reports
fol. 209.

So that the case of Dr. Coveney is not rightly stated in the Allegation of those of *Magdalen College*, that because Dr. Coveney being deprived by the Bishop of *Winchester* Local Visitor, and Appealing to the Queen, it was adjudged, that the Appeal did not lye, because deprivation was merely Temporal and Tryable at Common Law ; for my Lord Dyer only shews, that according to the Statutes of 24 and 25 H. 8. the Appeal was to be from a Sentence in the Arch-Bishops Court to the King in Chancery, but Dr. Coveney's deprivation was not by any Sentence in the Arch-Bishops Court, and consequently not within the Statutes to bring his Appeal to the Queen in Chancery.

The Artifice
used by those
of St. Mary
Magdalen College,
in citing
this case.

Now the Artifice used by the favorers of the Fellows is, that they make Dr. Coveney to Appeal to the Queen, without mentioning in Chancery, and so it was not brought before the Queen as Supreme Visitor, and so was not within the Statute either way, since the deprivation was by the Local Visitor only, and in that case his remedy had been at Common Law only.

Savile's Reports
fol. 83. 105.

It were easie to quote the resolutions of several Judges, that no Appeals lye to any but the King in person from a Sentence of the Kings Commissioners in Ecclesiastical causes ; so Baron Savile affirms, that no Appeal doth lye from a Sentence in the High Commission Court, and that the High Commission Court is not within the meaning of the Statute of the 25 of H. 8. but the Opinion of my Lord Dyer or others do not exclude an Appeal to the King in person, who is the Fountain of Justice, and all the Statutes of King Henry the 8th. and Queen Elizabeth as to the Erecting of Courts and granting Jurisdiction

Dyer's Reports
fol. 42.

on

on do only remit and restore the King to his Ancient Jurisdiction of Visiting and Reforming abuses, relieving Appeals and other Judicial Acts, as Supreme Head and Ordinary, as Serjant *Dacres* observes.

I shall now Instance in a case of later date, wherein there being an Appeal made to the House of Lords against a Decree of the Delegates, the Lords dismissed it as not coming properly before them.

§. 15.
The Case of
Charles Costington Esq;,
about Appeals,

3 The case was this, *Charles Costington* Esq; exhibited his Petition May the 10. 1678. to the Lords, shewing, that in the Year 1677. he Travailing into Foreign parts, unfortunately fell into acquaintance with one *Angela Margareta Gallina*, Daughter to a broken Gold-smith in *Turin* in the Dukedom of *Savoy*, and was contracted to her in the presence of a Romish Priest in *Turin*, that afterwards he found her a vicious person, Married to one *Frichione Patrimoniale*, upon which Information he left her and returned for *England*. Then he sets forth that this *Gallina* came to *England* and claimed to be the Petitioners Wife, that he had cited her before the Dean of the Arches in a cause de *jaestitatione Matrimonii*, and she alleged that before the contract with the Petitioner she was Divorced from *Patrimoniale*, and the Divorce was pronounced by the Arch-Bishop of *Turin*, and that tho' he made it appear that the Sentence was Collusory, and in it self void and not to be regarded in *England*, yet the Judge of the Arches had Sentenced the said *Gallina* to be the Petitioners Wife. Then follows the premises, so highly concerning your Petitioner both to the peril of his Conscience, Honor, Body, and Estate, and concerning this his Majesties Kingdom in

Ex Autographo
In the Custody
of the Clerk of
the Parliament,

The Petition
of Mr. *Costington*.

‘in the Establishing a Foreign Jurisdiction against the Laws of the Kingdom.

‘Your Petitioner humbly Appealeth in the premisses to this High and Honorable Court, and humbly prayeth that the said Sentence of the said Dean of the Arches, and Commissioners Delegates may be reversed.

Referred to the Committee of privileges.

‘This was referred to the Committee of privileges.

The Earl of Essex's Report from that Committee.

‘*June* the 6th. it was ordered that Presidents, and Records should be brought, and Council to be heard.

‘*June* the 12th. The Earl of *Essex* made report from the Committee, that upon full hearing what was alleged by Council on both sides, and upon perusal of several Presidents, they are of Opinion that the said Appeal did not come properly before them, the Earl of *Shaftsbury* only dissenting, as by his Subscription appears.

‘The Order is entred in these words.

Die Luna. 17^o. Junii 1678.

The House of Lords Order upon it.

‘According to the Order of the 12th. of this Instant *June*, the House took into consideration the Report from the Committee of privileges, concerning the Appeal of *Charles Cottington* Esq; from the Commissioners Delegates; whether the said Appeals be properly brought before this House. The Opinion of the Committee being, that the said Appeal did not properly come before this House. After debate and consideration of Presidents, the Question being put, Whither to agree with this Committee in the Report? It was resolved in the Affirmative, and it is thereupon Ordered, that the Petition and Appeal of the said *Charles Cottington* be dismissed the House of Peers.

It

Considerations
upon this Case.

It is to be considered in this matter, that after the Sentence in favor of this *Gallina* by the Delegates, Mr. *Cottington* Petitioned the King in person for a review or dis-annulling the Decree, which the King refused to grant, and upon that the Petitioner Addressed himself to the Lords, whose Order I have recited, and tho' it be not expressed in the same Order, why the matter was not properly brought before their Lordships; yet it is well known, that the cause was by reason that Appeals in Ecclesiastical causes do not lye before their Lordships. If I could have procured the Printed Case I might have enlarged upon this matter, and if it be my good fortune to meet with it before the Publication hereof; I shall take notice of what may be material in the Appendix.

It is Ninthly Objected, that tho' it be allowed that the Kings of *England* have sometimes dispensed with College Statutes, and done those things I have all along Instanced in; yet that proves not the Right or Justice of the thing; since *à facto. ad jus, non valet consequentia.*

§. 16.

The Ninth Objection, that matter of Fact proves not right.

To this I Answer, there is a vast disproportion betwixt the Acts of Kings, and of Subjects. Constant and un-interrupted usage are the Foundations of the Customs of *England*, which are Incorporated into the Common Law of the Land, and so many Rights are determined for private persons. But in the Orders of the Sovereign, one declaration of his pleasure by Mandate, in several Cases is sufficient Precedent, tho' but rarely made use of, upon the presumption in Law, that such Acts of Kings are not without deliberate consultation. However the constant practice of the Kings of *England*, which I hope I have fully proved, takes away all colour for this Argument: And it is most certain

The Answer.

If the Kings
Prerogative in
this Case had
been against
Law, it would
have been
questioned at
some time.

The King in
Possession of
this Preroga-
tive.

The Original
Prerogative of
dispensing in
the King.

A Transition to
what is to be
Treated of in
the Appendix.

certain, if the Kings dispensing power with Statutes, and putting in Heads of Colleges, Fellows, &c. by Mandates, had been against the Law, we should at some time or other heard of Actions brought before the Judges, against the Kings Authority in that matter, and found determinations upon them in favor of the aggrieved, which I think is not to be found. But the Kings of *England* have been in Possession of this Prerogative in all Ages, tho' most conspicuously since the Reformation, and so this Prerogative must be adjudged to appertain to the King, till by some Legal Tryal it shall be determined otherwise.

It may be upon this Topick rationally urged, that tho' the Kings dispensing power in other matters be in the Law Books only made out in some particular Cases; yet those sufficiently prove that the Original Prerogative of Dispensation being in the King, it may branch it self to all such matters as the King pleaseth to apply it to, which by no particular Act he or his Predecessors, as far as they can oblige him, have debarred themselves from the exercise of, and the continual Series of this dispensing sometime in one & other times in a fresh matter, is sufficient evidence that our Kings have not given up this Prerogative wholly.

Thus I have gone through the most material Objections I have met with in the Vindication of the disobedience of the Fellows. As to the punishments inflicted upon them for it, I suppose none will question but they are according to Rules of Law, upon supposal the Crimes were clearly proved.

I should now have closed this Discourse, but that I am obliged for the Reasons given in the Preface to add some things that came not soon enough to my Hands, or went too soon out of them, which I shall digest into Order of time, and put them in this following Appendix.

A N A P P E N D I X.

HAVING been necessitated, for the Reasons foregoing, to make these Additions ; I must desire the Courteous Reader to refer them to their proper places noted in the Margent.

I shall begin with this following Mandate for Replacing a Graduate Expelled out of the University of *Oxford* in these words.

§. 1.
A Mandate for Re-placing a Graduate Expelled.

Clause 40 E. 3.
part 2. M. 8.
rot. 10. & Ms. D.
*Hales in Bibliotheca Societatis
Lincolniensis.
lib. B. fol. 180.*

In English thus.

Rex dilectis in Christo
Cancellario & Magistris
Regentibus *Oxonii* salutem. Supplicaverunt nobis venerabilis in Christo Pater R. Dei Gratia *London* Episcopus, & *Tho. Russel* Prior Provincialis Ordinis Fratrum Prædicatorum in Anglia, ut cum *Johannes de Wulfington* Baccalaureus in Theologia, confrater prædicti Prioris, ad suggestionem, & procuracionem quorundam inimicorum suorum, extra Univer-

The King to the Well-beloved in Christ the Chancellor and Regent Masters in *Oxford* Greeting. The venerable Father in Christ *Ralph* by Gods Grace Bishop of *London*, and *Tho. Russel* Prior Provincial of the Order of the Fryers Preachers in *England*, that whereas *John de Wulfington* Bachellor in Divinity confrere with the said Prior, by the suggestion and provocation of certain his Enemies, maliciously and

See chap. 4.
sect. 3. §. 1.
pag. 176. and
pag. 270.

V v

statem

fitatem prædictam, maliciose, & sine causa rationabili Bannitus extitit, in ipsius *Johannis* grave dampnum, & suscepcionem Altioris gradus in eadem facultate; & quod volumus ipsum *Johannem* ad Statum suum pristinum restitui jubere.

Nos supplicationi prædictæ favorabiliter Annuentes, vobis *Mandamus* quod ipsum *Johannem* ad prædictam Universitatem, & Statum, & gradum quibus steterit prius in eadem, sine difficultate aliqua Admittatis & reconciliatis, & ipsum sic Admissum, & reconciliatum, omnino quæ ad facultatem dictam, quousque ad Statum Altioorem juxta Statuta Universitatis illius promotus fuerit, facere & exercere permittatis, ne ob ullum defectum ipsum à potestate nostra deduci, & reconciliari faciamus. Teste Rege apud *Westm.* 18 die *Nov.*

without reasonable cause was Expelled the same University to the great damage of the said *John*, and the hindring of his receiving an higher Degree in the said faculty, and that we would Command the said *John* to be restored to his former State.

We favorably allowing the foresaid Petition, Command you without any difficulty to Admit and reconcile or restore the said *John* to the same University, and to the State and Degree in which he stood before in the same, and that you permit him so Admitted and Reconciled or restored, in all things to do and exercise what appertains to the said faculty, until he be promoted to an higher State, according to the Statutes of the University, lest for any defect, you make us bring back and restore the said *John* by our power or Authority. Witness the King

King at *Westminster* the
18th. day of *November*.

This being the oldest Mandate I have met with, I thought it needful to insert it at length, that all might know what Authority the King exercised in that Age.

By this Record it is manifest, that the King by Mandate could restore a Graduate who had been Expelled the University, and by parity of reason he must have the same Right to place any in the University according to his Royal pleasure; and whereas by this Expulsion there was a Suspension of his Degree, the King Capacitates him to receive it, when the time required by the Statutes of the University was expired, altho' he was thus disabled.

§. 2.
Inferences from
this Record.

So that in this one precept four particulars of the Kings Prerogative over the University are Asserted expressly, which in the foregoing parts of this Treatise I have by other Instances cleared, *viz.* First that the King is Supreme Visitor, to alter at his pleasure the Sentences, Decrees, or determinations of the University. Secondly, that tho' the University by their Statutes might stop a Graduate from taking an higher Degree, yet the King at his pleasure might restore him to his Pristin State, and make him capable of receiving his Degrees at the time limited by the Statutes. Thirdly, that the King did this without any formal proceedings at Law, but by his own Sovereign Authority and pleasure only declared in a Mandate. Fourthly, that if the Chancellor did refuse to obey the Mandate, the King threatens to have his pleasure fulfilled by his Royal power.

The prerogative of the King over the University, cleared in four particulars by this Mandate.

§. 3.
The King
Founder of Col-
leges, *pat. 14 E.*
3. part 3. M. 9.

See chap. 3.
sect. 2. §. 6.
pag. 137. 138.

That the King by his Royal Authority Constituted made and Erected Colleges, appears by the following Clause of King *Edward* the Thirds Charter to *Queens* College in *Oxford* in these words. *Memoratam Aulam, cum Praposito, & ceteris Sociis, per Electionem in futurum habitantibus & morantibus in eadem, quos ad verum Collegium erigimus & existere ex nunc proponimus; & ut Collegium Licitum & approbatum agnoscimus* *Authoritate nostra plena qua possimus ratificamus & confirmamus, &c.* This is Dated 18 January Anno 1340. Granted to *Robert Eglesfield* of *Cumberland* Bachellor of Divinity Chaplain to *Philippa*, Queen Consort to King *Edward* the Third, and Rector of *Burgh* under *Stanemore*, being descended of an Ancient Family in that County, and in this Charter, the King Grants him liberty to Found it and Endow it with Lands, and to appoint the Orders of the Government of it, as at large may be seen in the Tower of *London*, and a considerable part of it in * *Mr. Woods* Antiquities of *Oxford*, to which I refer the Reader.

* *Lib. 2. fol. 113.*

That the Kings of *England* had reserved to themselves power of Visiting and Reforming Abbies, Priors, Hospitals, and Religious Colleges and Houses is not to be doubted. I shall only give an account of a Mandate of King *Edward* the Third, concerning an Amercement relaxed; the Case was this.

The Kings
Mandate for
taking off an
Amercement
from the Prior
of *St. Swithins*
Rot. Claus.
20 E. 3. part 3.
M. 7. & D. Hales,
ut supra.

The Prior of *St. Swithins* being absent from his Convent a longer time than the Statutes allowed, was Amerced by the Chapter of the Priory. But the King sends his Mandate to the Chapter Commanding them to discharge the Amercement Imposed by them upon the Prior; who had been in his Service and was under his Protection, which was ordered

dered accordingly. From which we may learn, that the King hath a Supreme power over such Societies, and so likewise over Colleges to remit Penalties, and consequently must have power to inflict them upon Offenders.

I shall give one Precedent more concerning the Kings power to enjoin obedience of the Head and Fellows of a College to submit to a Local Visitor, where the Plea against him probably was an Exemption granted them by the Pope; the Case was this.

The Kings Mandate to enjoin the Provost and Members of *Queens College in Oxford*, to submit to the Visitation of the Arch-Bishop of *Tork* their Local Visitor.

'The Provost and Scholars of *Queens College in Oxford* by their Statutes were to be under the Visitation of the Arch-Bishop of *Tork*, or his Commissary, and it seems they refused to submit to the Visitation of *Alexander Nevil* Arch Bishop of *Tork*; whereupon the King Commands them to obey him as may be seen in the Mandate at large. I shall only note the last Clause, viz. *Quod si in vobis Rebellio vel defectus in hac parte reperitur, vos, qui Regii Mandati contemptores, & Rebelles eritis, taliter puniri faciamus, quod punitio vestra aliis omnibus cedit preueniem in Terrorem consimilia post modum presumentibus T. Rege apud Westmonast. 18. Nov.*

See here chap. 4. sect. 2. & 12. pag. 175.

Rot. Claus. 50 E. 3^d par. 2. M. 9. c. Mj. D. Hales, ut supra.

The English of which is, 'that for certain they shall know if in them be found Rebellion, (so it seems dis-obedience to the Kings Mandate is Styled, which ought to be noted well by such as obstinately refuse obedience to it) 'or defective; in that particular, the King will cause them to be so punished, that their punishment shall be to the lasting Terror of those who shall presume hereafter to do the like.

Nota, that dis-obedience to the Kings Mandate is Styled Rebellion.

See chap. 4. sect. 3. u. 6. pag. 187.

I shall now Insert a determination of the Bishop of Ely as Local Visitor, about the Interpretation of some Statutes of St. Johns College in Cambridge, as followeth.

§. 4.
The Interpretation of a Statute of St. Johns College in Cambridge by the Bishop of Ely their Visitor. Paper-Office at Whitehall.

Cum in Injunctionibus per Visitatores Regios vestro Collegio jam diu editis, & præscriptis, positum sit, ut in Electionibus quibuscunque ille Electus habeatur quem sex seniores, etiam dissentiente, & repugnante Magistro eligendum duxerint: Jam vero postea aliæ Ordinationes, & Statuta vobis ab ipsa Reginea Majestate nuper Imposita sunt his verbis. Ut in omnibus & singulis Electionibus, Locationibus, & Concessionibus quibuscunque, Magistri seu Præpositi illius Collegii Assensus & consensus, necessario requirendus est, quoniam posteriora tollunt Priora, meo Judicio & Interpretatione posterius hoc Statutum Regium valere magis debet; ita tamen ut pro modo & ratione omnium & singulorum Officiariorum referendi omnino estis ad formam illam descriptam in Statuto de Electione præsidis, & ad Injunctionem in Margine ejusdem Statuti per Regios Visitatores editam. Hæc demum mea Interpretatio & Sententia est.

Richard Ely.

This was *Richard Cox*, Consecrated Bishop of Ely 21 December Anno 1559. who continued Bishop Twenty one Years; After whose Death the See was Vacant about Twenty Years, as appears by *Godwins* Catalogue of Bishops. Whereby we may Obiter note that it is no new thing for Bishoprics to be kept long in the Kings Hands un-disposed of.

From

From this Interpretation of the Local Visitor, it may first be observed, that the Visitors appointed by the Queen did publish Injunctions about Elections by the powers given them from the Queen ; yet after the Queen did her self impose upon the College new Ordinances and Statutes. Secondly, that the Bishop judgeth that the later Statutes made void the former, and so adheres to the observation of the last. From hence Thirdly, it is most rational to observe, that the Kings of *England* having power to change Statutes, either by themselves in their Closets, or by their Commissioners, as it is manifest the Queen in this Case did, then it much more follows, that the Kings of *England* may by dispensation supersede the execution of any Statute. Fourthly, it is clear that the Local Visitor by his Interpretation may decide a Controversie in a College, whether the Society stand obliged to observe the old or new Statutes, and if the Local Visitor hath such a power, much more may a King of *England* exercise the like.

Observations upon this Interpretation of the Local Visitor.

I now pass to some things more immediately relating to *St. Mary Magdalen* College.

Having after long Sollicitation obtained by the help of Mr. *Thomas Fairfax*, a Transcript of some Branches of the Statutes made by Bishop *Waynfleet* out of the Register *E*. I shall here Insert them, that the Judicious Reader may see, that notwithstanding the Plea so much Insisted upon, that the Fellows were obliged by Oath to observe their Statutes in the Literal Grammatical Sense, and neither seek nor admit of any dispensation by any Authority whatever, yet such Statutes have not been observed by themselves, but either by too great strictness of them or some Immemorial dispensation, or the pravity of the

§. 5.
Extracts of some Statutes. See pag. 17. here and *pa.* 18. 23, 24, 33.

How the Fellows of *St. Mary Magdalen* College cannot justify their adhering to the Literal and Grammatical sense of their Statutes, nor that they cannot be dispensed with.

Ages

Ages by-past and current, that can endure no restraints, these Statutes have been disused and grown obsolete, yet the Oaths are taken in General to all the Statutes, so that the Scholars and Fellows can no ways be free from the guilt of perjury, without a Tacit reserved Sence, that such are to be understood they Swear to keep, as are then of force and use: And Admitting such a reserve; it may be allowed in the obligation to any other Statute which they bind themselves to observe, so long as the Sovereign dispenseth not with them, which distinction being allowed a readier, obedience would be payed to the King, and the pretences of a Conscienciousness not to be perjured would vanish.

§. 6.
Transcripts of
the Statutes to
be served by
Males only.

But I pass now to the Statutes themselves.

The words of that against being served with Women runs thus.

The Title is *Quod omnia Ministeria fiant per Masculos.*

The Body is thus.

Ordinamus autem pro perpetuis futuris Temporibus ac firmiter observari præcepimus, quod singula Ministeria, dicto Collegio & personis ejusdem competentia, præsertim infra Manerium Collegii ejusdem fiant per Masculos, ut quælibet sinistra suspicio, quantum fieri potest cautius evitetur, nisi forte sit Mappa-

We Ordain and Command firmly to be observed in all future times, that all the Services to be done in the said College, and the persons therein, especially within the compass or Manor of the College, be performed by Males, that all evil suspicion as much as may be, may more cautiously be avoided unless it be on-

rum,

rum, ac aliorum usualium vestimentorum lotrix, quæ per Manus Janitoris singula recipiat sic lavenda in defectu lotoris Masculi, quam talis ætatis, talisque conditionis esse volumus in quam sinistra suspicio cadere verisimiliter non debeat.

Washer-woman of Table Cloaths, Towels and other usual wearing Cloaths, which several things so to be washed she shall receive by the hand of the Porter in default of a Male washer, & the Washer-woman we will shall be of such Age and condition as on whom probably no evil suspicion ought to fall.

However strict this Statute is, yet it is manifest, that Laundresses receive not now their Linnens at the Porters Lodge, but those and Bed makers are constantly Admitted to the Chambers of Students and Fellows.

There is another Statute as little observed concerning playing at Dice and Cards and haunting of Taverns, the words are, Regist. E. pag. 6.

§. 7.
Statutes against
Dice and Cards.

Statuimus Ordinamus & Volumus quod nullus Scholarium vel Sociorum dicti Collegii leporarium teneat — Taxillorum infuper & alearum tam Cardarum quam Carparum Ludum infra Collegium prædictum vel alibi infra Universitatem ipsis penitus Interdicimus &

We Constitute Ordain and Will, that none of the Scholars or Fellows keep a Grey-hound — and we moreover wholly Interdict and forbid the same all Play, at Dice or Cards within the College or other where within the University, and if any of those contravene

What is meant
by Carparum
I have not
found.

X x

etiam

etiam prohibemus, si quis vero prædictus prohibitioni nostræ Contravenerit, si super hoc Convictus fuerit, poenam Scholaribus & Sociis dicti Collegii extra Universitatem sine Licentia divulantibus in proximo præcedente Capitulo Limitatum Incurrere Statuimus & Volumus ipso facto.

our prohibition, if he be Convicted of it, We Constitute and Will, that *Ipso facto* they incur such penalties as in the next foregoing Chapter are appointed for those Scholars and Fellows who go out of the University into the Country without leave.

Id. p. 59. 60.

The Statute which this refers to, runs thus.

Dum absentes fuerint in Patria, sicut decet Clericos Induantur & honeste Moribus Conversentur, nec pro tunc vel dum in Universitate fuerint iidem Socii ac Scholares, Tabernas Spectacula vel alia loca Inhonestæ exererunt aut frequentent, & à Comitivis suspectis penitus se abstineant.

While they are absent in the Country, let them be Habited as Clerks and converse honestly in manners, neither let the same Fellows or Scholars while they are there or in the University, go forth to spend their time or frequent Taverns, public Shews (such we may reckon Bear and Bull-battings, Stage-plays) and let them wholly abstain from suspected Company.

The Penalties for all these follow.

Alioquin

Alioquin si forsan quisquam Scholarium aut Sociorum prædictorum post publicationem præsentis nostri Statuti, (quam loco monitionis Legitimæ haberi volumus) in præmissis vel eorum aliquo culpabilis invenietur, cujuscunque gradus Status aut conditionis fuerit, pro 1^a vice, per septimanam, pro 2^a vice per quindenam, pro tertia vice per mensem tunc proxime sequentem Communis suis careat ipso facto; si vero 4^{ta} deliquerit in hoc casu ab ipso Collegio nostro præfato vigore Statuti ipsum exclusum & privatum fore decernimus.

If it happen that any of the Scholars or Fellows aforesaid after publication of this our present Statute, (which we will to be reputed instead of a lawful Admonition) be found culpable in the premises or any of them of what Degree State or condition he be, we appoint that he want his Commons for the first fault one week, for the second 15 days, and for the third a whole Month; and if he offend the fourth time, in this Case by the force of this Statute we Decree him to be Expelled from our said College.

How these Statutes have been observed is sufficiently known, while Tables, Dice and Cards have been continually for many Years last past exposed for the use of all in the Common-Room, which how innocent soever a Recretation it may be in private Rooms, yet in so public a manner in a College where by the Statutes they are forbid under such penalties, cannot but suggest to all that these Statutes are neither Literally and Grammatically, nor at all observed.

§. 8.
Statute con-
cerning repair.

There is another Statute, that hath not been very Religiously observed by some of the late Ejected Fellows, as I am Informed, and that is about the keeping in repair the buildings appertaining to the College, the Statute runs thus.

Sub obtestatione Divini Judicii specialiter Injungimus munimus & insuper Statuimus ut Capella nostri Collegii & Aula, singulaque alia Aedificia Dei adjutorio laboriose nostris *sumptibus adificata* in muris Cooperentur, & qualibet sui parte perpetuis futuris Temporibus per Dei gratiam debite sufficienter & congrue in omnibus sustententur.

Under the humble beseeching of Divine Judgment we specially enjoin Strengthen and likewise Constitute that the Chappel of our College, and the Hall and all other the Buildings which by the help of God at our costs with great labor have been Erected, may by Gods Grace in all succeeding times be duely sufficiently and conveniently kept in repair in the Walls, Rooffs and every part in all things.

How this Statute hath been observed, appears by the late pulling down and Selling the Materials of the College of *Brakley* in *Norshampton-shire*, which by the Founder was built as a place for the Members of the College to Inhabit in and pursue their Studies, in case Fire or Plague, or any other public Calamity might enforce the Scholars and Fellows to remove from the College at *Oxford*.

§. 9.
About saying of
Mass.

Upon the Ejected Fellows grand plea of observing the Literal and Grammatical Sense of the Statute and

and admitting no dispensation by any Authority so-
 ever, I see not how the Fellows can avoid being ob-
 liged to say the Mass of the Holy Ghost before they go
 to Election, as the Statute expressly enjoyns, as like-
 wise to say dayly Masses, Solemn Obits, and parti-
 cular Prayers for the Souls of the Founders and Be-
 nefactors, &c. For if they allege that they are pro-
 hibited to use such by Act of Parliament, they confess
 that their Statutes are dispensed with by some Autho-
 rity, and that they yield to and allow such dispensa-
 tion which is against the Literal sence of the Oath,
 which I have recited before: And I hope I have made
 it clear, that the King hath as much Authority to
 Suspend, and so Temporarily abolish any of their
 Statutes, as an Act of Parliament hath to perpetuate
 it.

*Vide pag. 33.
 here.*

5 I need not touch upon the Qualifications required
 in the persons to be Elected, as that they should be
 poor, when it is notoriously known, that not only in
 the times long since Fellowships have been bought,
 but Mony payed for Resignations, and if I be not mis-
 informed, even some of the late Ejected Fellows had
 not re-inbursed themselves of the Mony they had
 payed to purchase their Fellowships, so that it was
 grown to a by-word, that an Election at St. Mary
 Magdalen, was a Magdalen Fair.

*Concerning
 purchasing of
 Fellowships.*

Having thus touched upon some of the Statutes,
 which we find the Society have taken upon them to
 dispense with or abolish, I proceed to give a true
 Narrative of Dr. Haddons Case, of which I gave an
 Account before, such as I was then able to do; but
 now by the direction of Bishop Giffard and the great
 care of my Honored friend the Learned Mr. Thomas
 Fairfax, who hath extracted the Materials out of
 their

Pag. 311. here.

their public Register, I am enabled to clear the Case most fully.

I shall not repeat what I have observed before out of Mr. *Woods* Antiquities of *Oxford*, but only note how faithful he hath been in his Collections, and that this Dr. *Haddon* was every way as incapable of being Elected President by the Literal and Grammatical sense of the Statute, as Mr. *Farmer* was.

But I shall pass to the account I have received from the Register.

*Out of the Petition of the College to Edward the 6th.
Dated the 3d. of July 1551.*

§. 10.
Concerning Dr.
Haddon.

‘**W**HERE it has pleased your Highness upon consideration, that Dr. *Oglethorpe* President of your College, was fully resolved and determin’d to leave and resign at *Michaelmas* next ensuing, his Office aforesaid, to direct unto us your most Honorable Letters in favor of Dr. *Haddon*, therein requiring us to Nominate and Elect him to the said Room, when it shall be void : Like as we have hitherto and shall gladly forbear to condescend upon any other Man, in consideration of your most Gracious Letter, and much more to proceed to the Election of any other ; so do we upon our Knees most humbly beseech your Majesty to consider, that we your Orators have not only an Ordinance and Statute in your said College, whereby we stand specially bounden to Nominate unto the said Office such as have been of our Foundation being Ministers. but also are thereunto by our Oaths every one of us strictly enforced ; and albeit Dr. *Haddon* is a Man of approved Learning, honesty and worthy of much better preferment, and such a one

'one as most willingly, at your Graces Hands, be-
 'fore all other, we would thankfully accept, *Nomi-*
 'nate and Elect, if he were eligible, being sorry even
 'with all our hearts, that there is an *impediment* in
 'our Statutes, that may restrain our willing minds
 'and good hearts: Yet considering he is not of our
 'Foundation; that it toucheth us all in *Conscience* to
 'violate our Statute, whereunto we have *Sworn*, and
 'that he is not a *Minister*, which is required by our
 'Foundation, and on the other side, that we have of
 'our own Foundation fundry persons of much ho-
 'nesty and Learning --- which are Ministers, where-
 'by they may in their own persons further the word
 'of God. Finally, that it were not only a great dis-
 'gracing and discomfort to our College, that no one
 'Man of our Foundation could be thought meet to
 'succeed our former President; but also it might ap-
 'pear a *blemish to the whole University of Oxford to*
 '*sustain of all their Students an utter repeal*; we have
 'thought good to become humble Petitioners to your
 'Majesty, most humbly on our Knees beseeching your
 'Highness to be so Gracious Lord and Sovereign to
 'us, not to *co-act us by your Power Royal, and Su-*
 '*preme Authority*, which we most humbly prostrate
 'do *acknowledge*, and on our Knees *Reverence*, but
 'rather — to grant us your Gracious favor, that we
 'may have a *free Election, and follow our Oaths and*
 '*Consciences, &c.*

Here we must
 note the differ-
 ent way of this
 Societies pro-
 ceeding in King
 Edw. the 6th's
 time, from the
 late Fellows
 proceeding to
 Election contra-
 ry to the Kings
 express Man-
 date.

Subscribed

*The Vice-President and more part
of the Fellows.*

The

The King persisting, Dr. Haddon was Elected and Presented to the Bishop of Winchester thus by the College.

‘Reverendo in Christo Patri ac Domino D^{no}. Joanni
 ‘permissione Divina *Winton.* Episcopo Collegii B.
 ‘*Ma. Magd.* in Universitate *Oxon.* patrono intiger-
 ‘rimo, aut cuivis alii admittendi potestatem habenti,
 ‘*Gulielmus Reding V.* Præsidentis Collegii prædicti, nec
 ‘non ejusdem Collegii Scholares salutem in Domino.
 ‘Ad Officium Præsidentis in Collegio tuo præfato
 ‘per liberam resignationem ornatissimi viri *Onini*
 ‘*Oglethorpe* nuper Præsidentis 27 *Septemb.* Anno
 ‘Regni Serenissimi Principis *Edw. 6.* — factam jam
 ‘vacuam, non solum ad contemplationem binarum
 ‘litterarum prædicti Domini nostri Regis in favo-
 ‘rem egregii viri *Gaulteri Haddon* Scriptarum, quam
 ‘ad Speciale Mandatum ejusdem Principis ex Au-
 ‘toritate Regia Suprema, Autoritate suâ non solum
 ‘cum Statutorum *impedimentis nostroque juramento dis-*
 ‘*pensantis*, sed etiam interdicentis, ne ad alterius cu-
 ‘jusque Electionem procederemus quam præfati *Gual-*
 ‘*teri Haddon* sufficiens in præfatum Officium :
 ‘Nos itaque præfati Vice-Præsidentis & Scholares
 ‘omissis quibuscunque præscriptiunculis, alioquin
 ‘in hac Electione requisitis, sed quas in præfati
 ‘observare non potuimus, eximium virum *Gualterum*
 ‘*Haddonum* — in tui præfati Collegii Præsidentem
 ‘*unanimiter elegimus, &c.*

Datum 10 Octobris 1552.

Note here the grounds of the Societies obedience was the Kings special Mandate by his Supreme Authority and his dispensing with the Impediments of their Statutes and their Oath.

Inference from this.

Page 311. here.

I need not enlarge upon this matter, but refer to the Reader to what I have Writ before concerning it; only observing, that notwithstanding Dr. *Haddon* was no ways Statutably qualified, and that the Vice-
 Presi-

President, and Fellows did urge the obligation of their Oaths; yet they did not proceed to Election of another President, in contempt of the Kings Mandate, as the Modern Fellows have done; but after such a Dutiful representation of their Case as is seen in their Petition, they finding the King Insisting upon being obeyed, they yielded entirely, not only to Admit, but Elect him, and in the Instrument of presenting him to the Bishop of *Winchester*, they own the Kings dispensing power, and signifie likewise that they yielded in this to the Kings Supreme Authority.

I shall add but one Instance more of a President of *St. Mary Magdalen* College placed by the Queen, contrary to the desire of the Electors, who were more favorable to Mr. *Richard Smith*. For I find that the Queen placed Dr. *Bond* her Chaplain by her Authority, rejecting and declaring Null and Invalid the Election of Mr. *Smith*.

§. II.
The Queen Commands Dr. *Bond* to be Admitted President, and declares Null the Election of Mr. *Smith*.

The words of the Register are as followeth.

Quinto die mensis *Aprilis*—Anno Domini 1589
Eximius vir Dr. *Nicolaus Bond*, Sacræ Theologiæ Professor in Magna Aula Collegii *B. Mariae Magdalene* in Universitate *Oxon* protulit litteras patentes Regiæ Majestatis de ejus admissione in Officiū Præsidentis dicti Collegii, quæ in præsentia omnium Sociorum dicti Collegii in Universitate existentium publicè legebantur; quarum quidem litterarum tenor sequitur in his verbis.

Regist. G. fol. 280.

Elizabetha &c. Præsentam nominationem & Electionem de Ricardo Smith ad omnem juris effectum nullam & invalidam declaramus. — Nicholaum Bonde Capellanum nostrum in ejusdem Collegii Præsidentem, durante vita sua naturali nominamus & constituimus, ac ad omnes effectus præficimus, curamque, regimen, & administrationem dicti Collegii eidem tanquam legitimo Præsidenti in omnibus committimus,

This is a very pertinent Precedent of a Mandate like that of our King for the Bishop of *Oxford* obeyed by the Society, which some of the late Fellows could not be ignorant of.

in tam amplis modo & forma, quam quivis alius munus & Officium Præsidentis in dicto Collegio unquam habuit, exercuit, possedit, aut gavissus est, vel habere, exercere & possidere aut gaudere potuit aut debuit: *Mandantes* insuper Vice-Præsidenti, Sociis, Scholaribus, cæterisque dicti Collegii Ministris ac personis omnibus & singulis, quorum aliqua ratione interesse potuit, quatenus Dictum *Nicolaum Bonde* in Præsidentem Collegii prædicti *benigne admittant & recipiant*, ac ei ut Præsidenti suo in omnibus ac per omnia pareant, ac obtemperent, *aliquibus Statutis & Ordinationibus dicti Collegii etiam juratis* aut quacunque nominatione vel Electione dicti *Nicolai Bonde*, aut *Ricardi Smith* per aliquos dicti Collegii Socios in discordia forsitan nuper factis vel aliqua alia re, causâ, vel materia in aliquo quovismodo *non obstantibus* — In cujus rei Testimonium has litteras nostras fieri fecimus patentes, Teste missâ apud *Westm.* 4^o Die *Aprilis* Anno Regni nostri 31.

Here the Queen
dispenseth with
the Statutes
Sworn to by the
Society, and all
other thing
caus'd or matter
to the contrary
whatsoever.

C

Here the Fel-
lows were all
present at Dr.
Bonds taking
his Oath, and
he was recieved
and Admitted
President ac-
cording to the
Queens Man-
date.

Inferences from
this Mandate.

Eodem anno, mense, & Die post dictarum litterarum lectionem, tactis ac inspectis per dictum *Nicolaum Bonde* Sacro Sancti Evangelii, Juramentum Subscriptum præstitit in præsentia *omnium* Sociorum in Universitate prædicta tunc existentium, & in dicta magna aula Collegii prædicti quo quidem juramento præstito *receptus & admissus est* ut Præsides dicti Collegii. Sequitur juramentum Præsidis in Statutis.

By this Mandate of the Queens, it appears, that without any Election according to the Statute of the College, she *Nominates and Constitutes*, and to all effects *Prefers* Dr. *Bond* to the Presidentship during his Natural Life, *Commits* to him the Care, Government, and Administration of the said College in all things, as *Lawful President*, in as ample manner and form as any other ever had, exercised, possessed, or enjoyed

ed the Office of President in the same College. *Commanding* the Vice-President, Fellows, and Scholars, and the rest of the Servants of the said College, and all and every person, who by any means could have interest therein, that they kindly *Admit, and Receive* him as President of the College, and in all things *obey him* as their President, notwithstanding any Statutes and Ordinances of the said College, tho' *Sworn to* or any *Nomination* or *Election* of the said *Nicholas Bond* or *Richard Smith* by any of the Fellows of the said College, happily done in their late differences or any other cause or matters in any thing whatsoever.

I shall now give an account of a Petition I have found in the Paper-Office, which will clear the matter of the Kings dispensing power with College Statutes most fully.

For the better understanding this Petition, it must be observed, that Sir *Walter Mildmay* Founded *Emanuel* College in *Cambridge* for Students in Divinity, that it might be a Nursery for Divines; and gave several Benefices with Cure of Souls, to be bestowed upon the Fellows, as they fell void, that they might be Preachers in the Country. That therefore they might not be superannuated in the College, he made one of the Statutes *de Mora Sociorum*, that the Fellows should leave the College some short space of time after they were Doctors of Divinity, and they were to take the preceding Degrees, according to the strictness of the Statutes of the University, for the taking Degrees when of due standing. By another Statute *de Residentia Sociorum*, they were tyed to strict Residence, so that they could not go abroad to have conversation and obtain the advantages that a relaxation of that strict Residence might have

§. 12.

An Historical Account of King *Charles*, the first, dispensing with a Statute of *Emanuel* College in *Cambridge*.

afforded them, whereby they might have made provision for themselves in obtaining Benefices, in case there should none fall in the Interim.

Now it so hapned, that the Founder had not annexed a sufficient number of Spiritual Benefices, so that some of them when Doctors of Divinity must have left the College unprovided for.

These considerations induced some of the Fellows to Petition for a dispensation with this Statute; and upon the suggestions in that Petition, King Charles the First granted it.

But it seems this dispensation was not so well liked by others, and even some of the first Petitioners joyned with them, and exhibired this following Petition.

§. 13.
Paper-Office
Ecclesiastica
Academica ab
An. 1620. ad 38.

The Petition of the Master and Fellows of Emanuel College in Cambridge, to the Honorable Chancellor of the University, humbly Sheweth.

The Relation of
the grounds of
the Petition.

THAT whereas a Petition by four of the Fellows. was exhibited to the late Noble Chancellor, touching the validity of one of our Statutes, viz. *de Morâ Sociorum in Collegio*, upon which a Letter for the Suspending of it, was granted by his Majesty, we now the present Master and a greater part of the Fellows of the said College, finding many inconveniences which do, and may ensue upon it (contrary to his Majesties Royal intendment, and desire of our relief and advancement by it, in that Suspension graciously declared and signified) become humble Petitioners to your Lordship, as being the Noble Ornament of our College, and most honorable Chancellor of the University, that you would vouchsafe to take it into your serious consideration, and move his Majesty for the Revocation of the said Suspension, in regard of these

these Reasons, which we presume to tender to your Honor.

1. The main ground the former Petitioners went upon, was a persuasion that either this was no Statute, or not of like validity with the rest, which upon full proof, (after long debating) being by the Heads of Colleges Confessed to be otherwise, they did surcease their suit, and some of them became Petitioners that the said Statute might be re-established.

Nine Reasons
for this Petition.

2. The Master by his Oath which he took at his Admission, is bound both to keep all the Statutes inviolably himself, as also to see the same done by others, which the Suspension forbiddeth him in this Statute *de Morâ Sociorum*, &c.

3. The Fellows by their Oath at their Admission are debarred from accepting any dispensation, either against any of the Founders Statutes, or against that their Oath: and thereby seem to be disabled from taking any benefit of this Suspension expressly containing a dispensation with the said Oath.

4. None of the Fellows to our knowledge, was ever yet by vertue of the said Statute turned out of his Fellowship unprovided, excepting one only of the present Petitioners, who notwithstanding before he left the College was provided of a good Parsonage, from whence he was since chosen Master of the said College.

5. Since the Suspension, six of the Fellows, before their time granted by Statute was expired, have been called to good Benefices with Pastoral charge, four of which were the Petitioners for the qualification of the said Statute.

6. We conceive just grounds of fear, partly by what we have heard, partly for other sufficient reasons, that the said Suspension hath already been and may prove hereafter, a discouragement to those who

who otherwise would be Benefactors to our College.

7. The Fellowships being but few in this College, if they be enlarged to perpetuity, younger Scholars will be discouraged in their Studies, seeing small hope of preferment for them, & be forced to leave the University before they be well fitted for a Pastoral charge.

8. Whereas our Honorable Founder Erected this College for a Nursery to the Church of *England*, and expresseth this to have been his meaning, that those who were brought up in it, should upon a fair Call, be transplanted hence, after they were fitted for the Ministry, the aforesaid liberty of longer continuance, will in likelihood, make some unwilling, to take on them a Pastoral charge being offered, whereby the Founders Pious intent shall be crossed, the Church deprived of the labors of such, and they shall not only remain unprofitable in the College, but also may in short time draw to themselves the Chief Government of the same, the Master having no Negative voice to hinder it, as all other Masters of Colleges have.

9. The Statute standing in it's former force, would have prevented no small disturbances of the peace of the College which have lately hapened.

*For all which Reasons we continue our former suit,
and rest your Lorships humble Petitioners.*

*William Sandcroft. Anth. Tuckney. Thomas Hill.
William Bridge. Samuel Bowles.
David Ensing. Anth. Burges.*

6. 14.
Observations
upon this Pe-
tion.

Upon this Petition King *Charles the First*, in the beginning of his Reign, referred the matter to the Vice-Chancellor and some Heads of Colleges, as I am informed, upon whose report the King saw no reason to take off his dispensation; altho' the Grandson of the Founder promised to add more Spiritual Benefices
to

to the Revenue of the College, whereby the Fellows might be better provided for.

Here first we may note, that one part of the Oath which the Fellows take being in these words, — *Nul- lum dispensationem contra Statuta fundatoris impetrabo; nec impetrari curabo, nec Impetratam acceptabo, viz.* that they will neither obtain any dispensation contrary to the Statutes of the Founder, nor will endeavor that any other should obtain them, or will accept of any such being obtained, so that the Fellows of this College were under the like obligation as these of *St. Mary Magdalen* College were.

Yet Secondly they all own the Kings power in dispensing with this Statute, and only by way of Petition shew their Reasons why the King should be desired to revoke it, but we hear of no persisting in the matter so as to cause the King to exercise his Supreme Authority to enforce their obedience; but pay a ready obedience, and that dispensation is in force to this day.

Thirdly, It is to be noted, that this dispensation was granted and yielded to, in a time when there were no public animosities, or that any Factious Combinations in the State Caballed against the Crown; but all was Calm, it being in the Halcyon Days of King *Charles* the First, and the Prerogative of the Crown was not disputed. Therefore we ought to allow this as a most Authentic Precedent of the Kings dispensing power, not for one or more single persons, but with an entire Statute which concerned the Succession of several persons in that, and in succeeding Ages.

Fourthly, As to the persons that Petition, Dr. *Sandcroft* was then Master, and Uncle to the present Arch-Bishop of *Canterbury*, Dr. *Tuckney* was in the time of the long Parliaments Usurpation Master of *St. Johns* College in *Cambridge*, and Dr. *Hill* Master of

Trinity

§. 15.
Dr. Brady's
Account of the
Kings Nomi-
nating the Pro-
vost of Kings
College in
Cambridge.

Trinity College, Dr. Bridge and Dr. Burges were great Preachers, and Damagogs of that Parliament,

I shall now close this with an Account which the Learned Dr. *Brady*, Regius Physic Professor in *Cambridge*, hath given me at my desire when he was at the last Commencement — ‘That in Kings College ‘in *Cambridge* they have a Statute that directs them ‘to choose a Provost in such Form, and with such ‘Qualifications as are appointed in the Statute, and by ‘Oath are bound not to accept of any Dispensation to ‘the contrary, yet from the very Foundation by King ‘*H. 6.* the Provost was ever named by the King to be ‘chosen by the Fellows, and it hath been so constant- ‘ly observed. The Fellows, as the present Provost ‘informs, put up a Petition to King *James* the First, ‘that he would be Graciously pleased to leave them to ‘their free choice: But his Answer was, that the Sta- ‘tute was Abrogated by the very practice of the ‘Founder, who Named two Provosts Successively in ‘his Life time, and by the constant practice of Suc- ‘ceeding Kings, and that he was their Founder, for ‘that the King never Dyes, and he would not part ‘with his Right of Nomination, but in other things ‘would leave them to the free use of their Statutes. Thus far the Doctors Letter.

I might add many other Modern Instances of the entire obedience payed to the Kings Mandates by Masters and Fellows of Colleges, and the unquestionableness of the Kings dispensing with Statutes in both Universities, and particularly in *St. Mary Magdalen College*, in the Reign of King *Charles* the Second, but understanding that a Member of that College hath Writ a Tract on that Subject, I shall here Conclude.

F I N I S.

